91-1707

No. _____

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In The

Supreme Court of the United States

October Term, 1991

IN RE
UNITED SERVICES AUTOMOBILE ASSOCIATION,

Petitioner

**Petition For Writ Of Mandamus,
Prohibition Or Other Appropriate Remedy
To The United States District Court
Central District of California**

**Petition For Writ Of Mandamus
APPENDIX, VOLUME II
PAGES A-166 - A-453**

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LAUGHLIN E. WATERS AND VOULA D. WATERS, Plaintiffs, v. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	Case No. 91 3615 WFN ADDENDUM IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR LEAVE TO AMEND AND REQUEST FOR SANCTIONS Date: November 8, 1991 Time: 8:30 a.m. Room: To be assigned (Judge Wm. Fremming Nielsen)

Attached for the Court's reference is a compilation of cases and documents reflecting USAA's various pleadings in various cases as reflected in plaintiffs' Memorandum of Points and Authorities filed concurrently herewith.

Dated this 15 day of October, 1991 at Claremont, California.

SHERNOFF, BIDART & DARRAS

By: William M. Shernoff
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No. 90-5009

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH COURT

LEROY TUCK, Administrator of the
Estate of JOHNNY L. TUCK, Deceased;
LEROY TUCK, an individual, and
DOROTHY TUCK, an individual,
Plaintiffs/Appellees,

vs.

ROBERT F. McDERMOTT, as the Class Representative
of the diverse Subscribers of
UNITED SERVICES AUTOMOBILE ASSOCIATION,
Defendant,

and

UNITED SERVICES AUTOMOBILE ASSOCIATION,
An Unincorporated Association,

Appellee.

ADDENDUM TO APPELLEES' BRIEF IN SUPPORT OF APPELLEES' MOTION TO IMPOSE SANCTIONS

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EXHIBIT "A"

MASTER LIST OF CASES

This is a listing of cases in which United Services Automobile Association has been involved as a party and in which the basis of Federal court jurisdiction is, or appears to be, diversity of citizenship.The cases are listed in reverse chronological sequence in the order in which the case, first, was closed and, second, was opened.

I. The following 22 cases were filed or remained opened, after the Tenth Circuit's decision in *Tuck* on 10/14/88, which directed USAA to file motions to dismiss in all diversity cases:

Case #1: *United Services Automobile Association v. Jeremy Arey, et al.*, 89-0139-A, Western District of Virginia. Complaint for Declaratory Judgment filed by USAA on 7/31/89. USAA alleged it was a Texas corporation and a citizen of Texas. Answer filed by Defendant Arey on 8/16/89. Set for trial on 9/20/90.

Case #2: *Insurance Company of the State of Pennsylvania v. Pacific Engineering and Production Co. of Nevada, Inc., et al., and United Services Automobile Association*, CV-S-89-380-PMP (LRL), District of Nevada. Complaint for Declaratory Judgment filed on 5/12/89. USAA alleged to be a reciprocal interinsurance exchange. USAA's Answer filed on 12/27/89. Case is still pending.

Case #3: *United Services Automobile Association v. Kenneth F. Barger, Jr.*, C 88-4007Y, Northern District of Ohio. Complaint for Subrogation filed by USAA on 10/31/88. USAA alleged it was Texas corporation. Defendant Barger's Answer filed on 12/21/88. Motions for Summary Judgment

were filed by USAA and Barger on 3/23/89. Barger's Motion for Summary Judgment and USAA's denied on 7/24/89. USAA filed its Notice on Appeal on 8/18/89. USAA's Brief in Chief was filed on 10/27/89. Appellee's Brief was filed on 11/28/89. USAA's Reply Brief filed on 12/22/89, and Appendix on 12/27/89. Oral argument on 5/8/90. Affirmed by the Sixth Circuit on 8/6/90. Mandate issued on 8/27/90.

Case #4: *Luz Stout and Lloyd Stout, individually, and as the natural Administrators of the Estate of their minor child, Angie Stout, v. Linda Claing Hamby and United Services Automobile Association,* 88-800, Middle District of Louisiana. USAA's Petition for Removal was filed on 9/22/88. USAA alleged that it was a foreign insurer whose principal place of business and whose citizenship for purposes of diversity was a state other than the State of Louisiana. Joint Motion to Remand granted 1/9/90.

Case #5: *Pacific International Services Corp. v. Kaji, et al., and United Services Automobile Association,* 89-00074-ACK, District of Hawaii. Complaint for Declaratory Judgment filed on 1/31/89. USAA's Motion to Intervene filed 3/24/89. Granted 4/25/89. USAA's Answer and Counterclaim filed on 6/6/89. USAA alleged it was a Texas corporation. Pacific International's Answer filed on 8/11/89. Stipulation for Dismissal without prejudice filed 11/21/89.

Case #6: *Transamerica Insurance Group v. Hawaiian Insurance and Guaranty Co., Ltd. and United Services Automobile Association,* 87-483-ACK, District of Hawaii. Complaint filed on 6/19/87. USAA's Answer filed 8/3/87. Case consolidated with 84-300 (Case #7) on 10/06/87.

Case #7: *United Services Automobile Association v. Hawaiian Insurance and Guaranty Co., Ltd., et al.*, 87-300-ACK, District of Hawaii. USAA's Complaint for Declaratory Judgment filed on 4/3/84. USAA alleged it was a Texas corporation. USAA filed Motions for Summary Judgment or Partial Summary Judgment on 4/2/85, 7/17/85, and 8/13/86, which were granted. A final Motion for Summary Judgment was filed by USAA on 2/29/88, which was granted on 6/21/88. HIG's Notice of Appeal was filed on 7/1/88, and its Amended Notice of Appeal on 7/8/88. USAA moved for entry of judgment on 4/14/89, which was granted on 8/4/89. USAA was awarded $318,720.88, plus $53.38 per day in interest after 2/29/88, the date of USAA's Motion for Summary Judgment. Appellant's Brief filed 1/19/89. USAA's Brief filed 3/22/89. Reply Brief filed 5/4/89. Oral arguments held on 6/6/89. Affirmed by the Ninth Circuit on 11/21/89.

Case #8: *Robert D. Liles, Jr., and Lois Liles v. United Services Automobile Association*, EC-86-336-S-D, Northern District of Mississippi. Petition for Removal filed by USAA on 11/19/86. USAA alleged it was a "corporate non-resident of the State of Texas" and was "not now and was not at the time of the institution of this accident nor at any time a citizen or resident corporation of the State of Mississippi." In its Response to Request for Admissions dated 6/8/88, USAA stated it was a "reciprocal inter-insurance exchange." Verdict of $500.00 for Plaintiffs rendered on 7/29/88. Order Vacating Judgment and Remanding Cause for Lack of Jurisdiction Over the Subject Matter signed 10/19/89.

Case #9: *Shelly Eason v. United Services Automobile Association,* 89-CV-594, Northern District of Georgia. USAA's Petition for Removal filed 3/29/89. USAA alleged that the proper Defendant was USAA Property and Casualty Company. Defendant was alleged to be a Texas corporation. Plaintiff's First Amendment to Complaint adding USAA Property and Casualty Company in place of United Services Automobile Association filed 5/11/89. Joint Motion to Remand filed 5/30/89, on the grounds that the case was not properly removable. "Defendant" was alleged to be a reciprocal interinsurance exchange. Consent Order Granting Motion to Remand signed 6/12/89.

Case #10: *Linda Mucha v. USAA (United Services Automobile Association),* S 87-0569 (G), Southern District of Mississippi. Complaint filed 9/10/87. USAA was alleged to be a Texas corporation. USAA's Answer filed 10/21/87, admitting that allegation. The case was settled and dismissed 5/18/89.

Case #11: *Donald L. Smith v. United Services Automobile Association,* 88-0324-C-1, Eastern District of Missouri. Complaint filed on 2/22/88. USAA is alleged to be a Texas corporation. USAA's Answer filed 3/29/88, admitting that allegation. Judgment for Plaintiff for $2,400.00 on 8/18/88. Dismissal of Count II With Prejudice filed by Plaintiff on 4/13/89. Satisfaction of Judgment filed 4/13/89.

Case #12: *United Services Automobile Association v. Anthony Evangelista, Administrator of the Estate of Benson Evangelista,* 87-7793, Eastern District of Pennsylvania. Complaint for Declaratory Judgment filed by USAA on 12/4/87. USAA alleged

it was Texas corporation. Motions for Summary Judgment filed by both parties on 6/30/88. USAA's Motion granted and Defendant's denied 10/13/88. Defendant's Notice of Appeal filed 11/1/88. Appellant's Brief filed 12/14/88. USAA's Brief filed 1/13/89. Reply Brief filed 1/27/89. Case submitted 2/1/89. Judgment affirmed by Third Circuit on 3/10/89. Mandate issued 4/3/89.

Case #13: *William Adam Herrmann v. United Services Automobile Association,* SA-87-CA-0316, Western District of Texas. Complaint filed 3/4/87. Amended Complaint filed 3/29/88. USAA was alleged to be a reciprocal insurance exchange "incorporated" under the laws of Texas. USAA's Answer filed 4/7/88. USAA denied there was diversity of citizenship. USAA's Motion to Dismiss for Want of Subject Matter Jurisdiction filed 3/22/89, and granted 4/5/89.

Case #14: *United Services Automobile Association v. Anita M. Jelks,* 88-58-CIV-2, Eastern District of North Carolina. State Complaint filed by USAA on 10/12/88. USAA alleged it was a Texas corporation. Petition for Removal filed by Jelks on 10/24/88. Jelks filed Answer and Counterclaim 11/3/88. USAA filed Reply to Counterclaim 11/28/88. USAA denied it was a corporation and alleged that the Court lacked subject matter jurisdiction. USAA filed Proposed Amendment to Complaint on 12/14/88, alleging it was an unincorporated insurance association. USAA filed Motion to Remand 1/19/89. Granted on 3/16/89.

Case #15: *Herese M. Patton v. James A. Smith and United Services Automobile Association,*

CV-87-1906, Western District of Louisiana, USAA's Petition for Removal filed 8/31/87. Case was settled on 2/28/89, and dismissed 3/2/89.

Case #16: *Eulema Dennis v. United Services Automobile Association,* CIV-88-2045-A, Western District of Oklahoma. Complaint filed 11/17/88. USAA's Motion to Dismiss filed 1/3/89. Joint Dismissal Without Prejudice filed 1/20/89. (Linda Alexander, Attorney for USAA).

Case #17: *George B. Lovelace, III, et al. v. United Services Automobile Association, et al.,* CIV-88-1236-P, Western District of Oklahoma. Complaint filed 7/22/88. USAA's Suggestion of Lack of Subject Matter Jurisdiction and Motion to Dismiss filed 8/18/88. USAA's Motion to Dismiss granted 11/23/88. Complaint dismissed with prejudice against USAA 12/16/88. (Linda Alexander, Attorney for USAA).

Case #18: *Hartford Casualty Insurance Co. v. Arthur J. Kennedy, et al., and United Services Automobile Association,* 88-CV-250, Northern District of Georgia. Complaint for Interpleader filed 2/5/88. USAA's Answer filed 6/3/88. Consent Judgment 1/24/89.

Case #19: *Morillas, et al., v. Progressive Casualty Insurance Co., et al., and United Services Automobile Association,* CV-87-2791, Western District of Louisiana. Case removed prior to USAA's entry. USAA sued as third-party defendant on 6/23/88. USAA filed Reconventional Demand on 7/19/88, and its Answer on 6/28/88. USAA's named as Defendant in Second Amended Complaint 8/11/88. Plaintiffs advised they would refile in state court 11/23/88. Action

administratively terminated without prejudice on 12/9/88.

Case #20: *James Porter and Rene Porter v. United Services Automobile Association and USAA Casualty Insurance Company,* CV-88-PT-0286-S, Northern District of Alabama. Complaint for breach of uninsured motorist policy filed 2/23/88. Complaint stated "Defendant is a corporation organized and existing under the laws of a state other than Alabama." USAA's Answer filed 3/23/88. Pre-Trial Order filed 9/29/88, admitted diversity of citizenship. Case was settled and dismissed on 12/14/88.

Case #21: *Integrity Insurance Company v. Barbara M. Dudney, et al., and United Services Automobile Association,* 3-87-0059, Middle District of Tennessee. Complaint for Declaratory Judgment filed 1/26/87. USAA was alleged to be a Texas corporation. USAA's Answer filed 2/19/87, admitted the truth of the allegation. USAA filed Motion to Dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Granted on 11/28/88.

Case #22: *Dennis O'Brien, M.D., v. USAA Properties II, Inc., d/b/a USA Property and Casualty Insurance and United Services Automobile Association,* 88-CV-1124, Northern District of Georgia. Complaint filed 5/23/88. United Services Automobile Association substituted as proper party defendant on 7/12/88. Motion to Dismiss for Lack of Jurisdiction Over the Subject Matter filed 8/12/88. Granted on 10/19/88.

II. The following 14 cases were filed or remained opened after the Claims Department Bulletin dated

5/2/88, which directed Claims personnel to seek dismissal of cases in which cases based on diversity in which USAA was named as a defendant, but which were closed before the Tenth Circuit's decision in *Tuck:*

> **Case #23:** *United Services Automobile Association v. Marc Jeser, et al.*, 88-1997, District of New Jersey. USAA's Complaint for Declaratory Judgment was filed on 5/4/88. USAA stated that it was a reciprocal interinsurance exchange but nevertheless alleged that it was a "corporate citizen of Texas" and that there was complete diversity of citizenship. Jeser's Answer and Counterclaim filed 6/8/88. Case was settled and dismissed on 9/6/88.
>
> **Case #24:** *Malcolm P. Dulock v. United Services Automobile Association*, 87-CV-1673, Northern District of Georgia. USAA's Petition for Removal filed 7/24/87. Pre-Trial Order filed 6/27/88. Jury verdict for USAA 8/30/88. Costs taxed for USAA 9/20/88.
>
> **Case #25:** *United Services Automobile Association v. Fugua Industries, Inc., et al.*, CIV-86-1350BT, Western District of Oklahoma. USAA's Complaint for Subrogation filed on 6/19/86. USAA alleged that it was a "an insurance company, domiciled in Texas." The final Pre-Trial Order filed 4/29/87, stipulated to the allegation and that the Court had jurisdiction over the subject matter. Jury verdict in favor of Defendants and against USAA on 5/13/87. USAA's Objection to Defendant's Motions for Attorney's Fees and Costs filed 6/2/87. USAA's Notice of Appeal of Magistrate's Decision filed 8/28/87. Appeal denied 2/29/88. Release and Satisfaction of

Judgment for attorney fees and costs filed 9/23/88.

Case #26: *United Services Automobile Association v. Barbara Weappa, et al.*, CV-86-AR-5072-NW, Northern District of Alabama. USAA's Complaint for Declaratory Judgment was filed on 2/10/86. USAA alleged it was an "insurance association incorporated under the laws of the State of Texas." Weappa filed Amended Answer and Counterclaim 4/29/86. USAA's Answer to Counterclaim filed 8/4/86. Pre-Trial Order filed 8/5/86. Diversity of citizenship was admitted. Counterclaim dismissed by Weappa on 10/15/86. Judgment in favor of USAA 11/5/87. Notice of Appeal filed 12/15/87. Affirmed by Fifth Circuit 8/5/88, mandate issued 8/31/88.

Case #27: *Timothy McGuire and Rosemary McGuire v. United Services Automobile Association and USAA Casualty Insurance Co.*, CV-S-87-601-LDG, District of Nevada. USAA's Petition for Removal filed 8/11/87. Joint Pre-Trial Order filed 6/13/88. Case settled on 7/26/88, and dismissed 7/28/88. Removal bond exonerated 8/18/88.

Case #28: *United Services Automobile Association v. Gina M. Burlison, et al.*, 88-CV-1420, Northern District of Georgia. USAA's Complaint for Interpleader filed 7/1/88. Order Granting Motion for Disbursement of Registry Funds ($300,000.00) on 7/25/88.

Case #29: *Brian G. Maloney v. Peter D. Ryan and United Services Automobile Association*, 87-2092, District of Maryland. Complaint filed 8/3/87. USAA's Motion to Intervene filed 2/20/88. USAA's Answer filed 3/2/88. Motion to Intervene granted 3/11/88. Case settled 5/24/88.

Case #30: *Kimberly Myers Liles v. United Services Automobile Association,* EC 86-337-S-D, Northern District of Mississippi. USAA's Petition for Removal filed 11/19/86. Consolidated with 86-336 on 8/13/87. Case dismissed with prejudice 5/19/88.

Case #31: *United Services Automobile Association v. William S. Stryker, M.D., et al.,* 86-2272-S(IEG), Southern District of California. USAA's Complaint for Declaratory Judgment filed on 11/18/86. USAA stated that it was a reciprocal interinsurance exchange with its principal place of business in San Antonio, Texas. USAA's Reply to Counterclaim of Defendants filed 3/26/87. Case settled and dismissed with prejudice on 5/11/88.

Case #32: *Carmen Vasquez and Marie Vasquez v. Luis E. Cruz Bermudez and United Services Automobile Association,* 86-0835-GG, District of Puerto Rico. Complaint filed 5/29/86. Answer filed 8/19/86. Case Settled 3/10/88. Order and Judgment 5/3/88.

Case #33: *United Services Automobile Association v. Sylvia Hunter Vaughn, et al.,* EC-86-16-D-D, Northern District of Mississippi. USAA's Complaint for Interpleader and Declaratory Judgment filed 1/14/86. USAA stated it was a reciprocal interinsurance exchange but alleged complete diversity of citizenship. Consolidated with EC-84-412, EC-84-413, and EC-84-414 (Cases #34-36) on 2/18/86.

Case #34: *Francis M. Vaughn, IV v. United Services Automobile Association,* EC-84-414-D-D, Northern District of Mississippi. Adult son of deceased subscriber, Francis M. Vaughn, Jr., filed Complaint on 12/12/84. USAA was stated

to be a reciprocal interinsurance exchange and the action was alleged to between citizens of different states. USAA's Answer filed on 2/6/85. USAA admitted the truth of those allegations. Case was consolidated with EC-84-412 and EC-84-413 on 2/14/86.

Case #35: *Sylvia Louise Vaughn v. United Services Automobile Association,* 84-413-D-D, Northern District of Mississippi. Complaint for bad faith breach of uninsured motorist policy filed by adult daughter of the named insured, Francis M. Vaughn, Jr., filed on 12/12/84. USAA was alleged to be a reciprocal interinsurance exchange and the action was alleged to between citizens of different states. USAA's answer filed on 2/6/85. USAA admitted the truth of those allegations. Case consolidated with EC-84-412 and EC-84-414 on 2/14/86.

Case #36: *Sylvia Hunter Vaughn v. United Services Automobile Association,* EC-84-412-D-D, Northern District of Mississippi. The spouse of the named insured, Francis M. Vaughn, Jr., deceased, filed her Complaint on 12/12/84. USAA was alleged to be a non-resident reciprocal interinsurance exchange and the action was alleged to be between citizens of different states. USAA's Answer was filed on 2/6/85. USAA admitted the truth of those allegations. Case consolidated with EC-84-413, EC-84-414 and EC-86-16 on 2/14/86. USAA's Motion for Summary Judgment filed 2/16/86. Granted on 5/31/88. Consolidated cases dismissed 5/31/88.

III. The following 38 cases were filed or remained opened after USAA filed its Motion to Dismiss in *Tuck* on 4/15/86, but before the Claims Department Bulletin:

Case #37: *Edgar A. Breland, Administrator of the Estate of Jarvis Breland, v. United Services Automobile Association,* 88-0131A, Eastern District of Virginia. Complaint filed 2/8/88. USAA's Motion to Dismiss for lack of subject matter jurisdiction over the subject matter filed 3/3/88. Breland agreed to voluntary dismissal.

Case #38: *Edith Gill, individually and as committee of Joseph E. Gill, and United Services Automobile Association v. Rollins Protective Service Co.,* 81-698-A, Eastern District of Virginia. Complaint filed 7/15/81. Rollins moved to add USAA as plaintiff. Motion granted. Jury returned verdict for plaintiffs. Rollins filed Notice of Appeal. Fourth Circuit vacated judgment and remanded case for new trial on 11/28/83. 722 F.2d 55. Jury returned verdict for Rollins. Gill and USAA's Motion for New Trial were denied. Gill and Rollins appealed and Rollins cross-appealed on USAA's claim under the Virginia Consumer Protection Act. The Fourth Circuit reversed denial of Motion for New Trial but affirmed trial court's ruling that USAA had a subrogated claim under the VCPA. 773 P.2d 592, 788 F.2d 1042. Jury again returned verdict for plaintiffs 12/8/86. Rollins filed Notice of Appeal on 12/19/86. Fourth Circuit affirmed judgment on 12/23/87. 836 F.2d 194. Satisfaction of Judgment filed 2/9/88.

Case #39: *James M. Saunders v. United Services Automobile Association,* H 85-0305 (N), Southern District of Mississippi. Complaint filed 9/25/85. USAA's Answer filed 9/8/86. Pre-Trial Order filed 2/4/88. Case dismissed with prejudice on 2/5/88.

Case #40: *Kenneth Hoffman, Executor of the Estate of Sandra Hoffman, Deceased, and Kenneth Hoffman v. United Services Automobile Association,* N 82-337, District of Connecticut. Complaint for Breach of uninsured motorist policy filed on 7/8/82. USAA's Answer filed 10/6/82. USAA's Motion for Summary Judgment granted in part, denied in part, 10/15/87. 671 F. Supp. 922. Case settled and dismissed with prejudice on 1/8/88.

Case #41: *Ronnie Barnes v. United Services Automobile Association,* LR-C-87-787, Eastern District of Arkansas. USAA's Petition for Removal filed 11/3/87. USAA alleged that it was a Texas corporation and "citizen of Texas for the purpose of determining diversity of citizenship." Stipulation of Dismissal by Parties filed 1/5/88.

Case #42: *Ray Holiday and Sandra Holiday v. United Services Automobile Association,* C 87-1281M, Western District of Washington. Complaint for Declaratory Judgment and Damages filed on 9/16/87. USAA was alleged to be an insurance company with its principal place of business in Texas and the action was alleged to be between citizens of different states. USAA's Answer was filed on 10/22/87. USAA denied the latter allegation and as an affirmative defense alleged that the Court lacked jurisdiction over the subject matter. USAA filed a Motion to Dismiss for lack of jurisdiction on 11/10/87. Attached thereto was an Affidavit of John L. Swyers, Vice-President and General Counsel of USAA. The Affidavit alleged that USAA was an unincorporated association and that USAA was [sic] numerous members in the State of Washington. The case was settled on 12/18/87, and dismissed on 12/30/87.

Case #43: *James M. List, et al., v. United Services Automobile Association,* 87-0204-VAC, District of Hawaii. USAA's Petition for Removal filed 3/17/87. USAA alleged that it was a Texas corporation and that the action involved citizens of different states. Stipulation to Remand to Removal Action filed 11/6/87.

Case #44: *Orma Gale Moore v. United Services Automobile Association and Bobbye C. Shine, Administratrix of the Estate of Francis Earle Shine,* S 85-0160(R), Southern District of Mississippi. USAA's Petition for Removal filed 2/20/85. USAA's Answer filed 3/21/85, Amended Answer 6/28/85. USAA's Motion for Summary Judgment filed 3/17/86. Moore's Motion to Remand filed 4/7/86. USAA's Motion was granted and Moore's denied on 6/30/86, and USAA was dismissed with prejudice. Moore filed an [sic] Notice of Appeal on 7/8/86. USAA filed a Motion for Sanctions on 7/10/86, which was denied on 9/3/86. USAA filed a Notice of Appeal on 9/18/86. The judgment of the trial court was reversed by the Fifth Circuit which held that the case had been improperly removed because the bad faith claim against USAA was not a separate and independent claim. 819 F.2d 101. Order of Remand signed 10/9/87.

Case #45: *Jesse D. Edwards v. United Services Automobile Association and Johnny E. Haines,* J 87-0499(B), Southern District of Mississippi. USAA's Petition for Removal was filed on 9/3/87. USAA alleged that it was a Texas corporation and that the action was between citizens of different states. The Plaintiff filed a Motion to Remand on 9/16/87, on the grounds that the

Defendant, John E. Haines, was a citizen of Mississippi, although never served.

Case #46: *Aetna Casualty Insurance Co. v. United Services Automobile Association,* 86-5200, Eastern District of Pennsylvania. The Complaint for Declaratory Judgment was filed 9/3/86. USAA was alleged to be a Texas corporation and the parties were alleged to be citizens of different states. USAA's Answer was filed on 9/29/86, and admitted the truth of the latter allegation. Aetna's Motion for Summary Judgment filed 5/5/87, and USAA's 5/7/87. Aetna's Motion was granted and USAA's denied on 9/24/87. 676 F. Supp. 79.

Case #47: *Hans Markland v. United Services Automobile Association,* L 85-00163, Northern District of Indiana. Complaint for Breach of Contract filed 12/23/85, Amended Complaint 3/13/86. USAA's Answer filed 7/30/86. Case was settled and dismissed 9/25/87.

Case #48: *Dawn A. Bradley v. United Services Automobile Association, et al.,* 87-0188, District of Hawaii. USAA's Petition for Removal filed 3/12/87. USAA alleged it was a Texas corporation and that the action involved citizens of different states. Stipulation to Remand Removal Action filed on 8/10/87, on the grounds that the lack of diversity, citing *Baer.* "This Stipulation is applicable to this action only, and is so limited."

Case #49: *Dawn A. Bradley v. United Services Automobile Association,* 88-0086, District of Hawaii. Complaint for bad faith breach of insurance contract filed 2/9/87. USAA was alleged to be a reciprocal interinsurance exchange but there was alleged to be diversity of citizenship. USAA's Answer was filed on 3/17/87, and

admitted the truth of those allegations. USAA's Scheduling Conference Statement filed 5/26/87, stated that the action was based upon diversity of citizenship, and that USAA was a reciprocal interinsurance exchange. A Stipulation for Dismissal Without Prejudice was filed on 8/14/87.

Case #50: *United Services Automobile Association v. Yong Suk Krieger, et al.*, 86-CV-1638, Northern District of Georgia. USAA's Complaint for Declaratory Judgment filed 7/25/86. USAA's Motion for Summary Judgment filed 12/24/86. Defendant's Motion for Summary Judgment filed 1/30/87. USAA's Motion granted and Defendant's denied on 3/19/87. Notice of Joint Appeal filed 4/3/87. Dismissed by Appellants 7/16/87.

Case #51: *John Cregor v. United Services Automobile Association*, 85-0528, District of Hawaii; 85-C-9171, Northern District of Illinois. Complaint for Declaratory Judgment filed 6/85 in Hawaii. Transferred and filed in Northern Illinois on 11/4/85. USAA's Amended Answer to Complaint filed 2/3/86. Case settled and dismissed with prejudice on 7/17/87.

Case #52: *United Services Automobile Association v. John M. Cregor, Jr., et al.*, 85-C-32-60, Northern District of Illinois. USAA's Complaint filed 4/10/85. Defendant's Motion to Dismiss are transferred on grounds they are citizens of Hawaii filed 6/6/85. USAA's Objection filed 6/18/85. Motion denied 9/30/85. Court found that USAA was a citizen of the State of Texas. 617 F. Supp. 1053. Case was settled 7/7/87, and dismissed 7/17/87.

Case #53: *George J. Woodside, II, et al. v. United Services Automobile Association,* 87-564-M3, Eastern District of Louisiana. Complaint filed 2/6/87. USAA's Answer filed 3/10/87. Dismissal Without Prejudice filed by Plaintiff 6/24/87, because of a pending state court action in re: same claim.

Case #54: *Beth F. Goldman v. Sharon Jett, Administratrix of the Estate of Kermit Jett, deceased, et al., and United Services Automobile Association,* C 86-753A, Northern District of Georgia. Complaint filed 4/2/86. USAA's Answer and Cross-Claim filed 5/27/86. Case settled as to USAA 5/21/87, and dismissed 6/8/87.

Case #55: *Clennarde McCorkle v. United Services Automobile Association and USAA Casualty Insurance Co.,* 85-5472, Southern District of Illinois. USAA's Petition for Removal filed 8/9/85. USAA's Motion to Consolidate and Reopen *USAA v. McCorkle,* 85-5365, filed 6/9/85. Motion denied 10/4/85. Amended Complaint filed 8/5/87. Third Amended Complaint filed 5/20/87. USAA's Answer filed 6/16/87. Jury verdict in favor of Defendant 6/17/87.

Case #56: *Judith Price Behl and Michael Behl v. United Services Automobile Association,* 87-462-CIV-T-10-A, Middle District of Florida. Complaint for Breach of Insurance Contract filed 4/2/87. USAA's Motion to Dismiss filed 5/5/87. Notice of Voluntary Dismissal by Plaintiffs 5/27/87.

Case #57: *Erma Rogers v. United Services Automobile Association and Patricia Ann Berry,* 86-CV-2226, Northern District of Georgia. USAA's Petition for Removal filed 10/16/86. Plaintiff's Motion to Remand for 4/24/87. Granted on

4/29/87. USAA's Response to Motion to Remand Filed 5/11/87, and Motion for Reconsideration 5/12/87. USAA's Motion denied 5/26/87.

Case #58: *Orma G. Moore v. United Services Automobile Association,* S 84-0463(N), Southern District of Mississippi. Complaint for Bad Faith Breach of Insurance Contract filed 5/30/84. USAA's Answer filed 7/11/84. USAA's Motion for Summary Judgment filed 12/12/84. USAA's Amended Answer filed 6/3/85. USAA's Motion for Summary Judgment granted 1/3/86. Moore's Notice of Appeal filed 1/31/86. USAA's Bill of Costs filed and Motion for Sanctions filed 2/3/86. USAA's Bill of Costs approved but Motion for Sanctions denied 4/3/86. USAA's Motion for Application for Review of Magistrate's Ruling on Motion for Sanctions filed 4/14/86. USAA's Objections overruled 5/2/86. Judgment for USAA affirmed by Fifth Circuit 2/5/87. 808 F.2d 1147. Mandate filed 3/31/87. USAA's Bill of Costs on appeals filed 3/31/87.

Case #59: *Jacob V. Elder and Gertrude A. Elder v. Glenn M. Keehn and United Services Automobile Association,* 85-5607, Eastern District of Louisiana. Complaint filed 12/6/85. USAA was alleged to be a foreign insurance company. USAA's Answer 2/5/86. In preliminary pretrial order 3/7/86 jurisdiction was conceded. Sixty Day Order of Dismissal filed 12/1/86. Case dismissed with prejudice 2/2/87.

Case #60: *Ronnie Choate, Administrator of the Estate of Anthony R. Choate, Deceased, v. United Services Automobile Association and Farmers Insurance Company, Inc.,* CIV-85-2656-T, Western District of Oklahoma. Complaint for Breach of Uninsured Motorist Policy filed on 10/30/85.

USAA was alleged to be a foreign insurance corporation and complete diversity of citizenship was alleged to exist. USAA's Answer filed 1/17/86. USAA's Motion for Summary Judgment on the grounds that the present action should be the action of a compulsory counterclaim in an interpleader action pending in state court filed 2/21/86. USAA's Motion granted 7/14/86. Plaintiff's Motion for Reconsideration denied 8/17/86. Notice of Appeal filed 9/10/86. Parties Motion to Dismiss filed 10/2/86. Appeal dismissed 10/8/86. Judgment entered in favor of USAA 2/27/87.

Case #61: *Louis H. Oss and Michelle S. Oss v. United Services Automobile Association,* 85-CV-12, Western District of Texas. Complaint filed for Breach of Insurance Contract filed 1/11/85. Summary Judgment granted in USAA's favor. Oss' Notice of Appeal filed 4/24/86. Appellant's Brief filed 6/9/86. USAA's Brief filed 7/8/86. Reply Brief 7/18/86. Judgment for USAA reversed by Fifth Circuit on 1/8/87. 807 F.2d 457. USAA's Petition for Rehearing filed 1/21/87. Denied 2/3/87. Case reopened 2/18/87. Date closed unknown.

Case #62: *United Services Automobile Association v. Leopold Guzman, et al.,* 85-675-GLW, Western District of Washington. USAA's Complaint filed 4/17/85. USAA alleged it was a Texas corporation. Amended Complaint filed 6/7/85. USAA again alleged it was a Texas corporation. USAA's Motion for Summary Judgment 1/30/86. Defendant's Motion for Summary Judgment 1/31/86. Judgment granted for Defendant's on 4/4/86. USAA's Notice of

Appeal filed 4/7/86. Case was settled 11/10/86. Appeal dismissed 1/17/87.

Case #63: *Margaret Ellen Fletcher v. Victor M. Rodriquez-Torres and United Services Automobile Association,* CV 85-0957-6, Western District of Louisiana. USAA's Petition for Removal filed 4/4/85. USAA's Answer filed 4/17/85. First Supplemental and Amended Answer filed 5/2/85. Plaintiff's First Amended and Supplemental Petition filed 5/10/85. USAA's Answer filed 5/21/85. USAA's Second Supplemental and Amended Answer filed 2/4/86. Plaintiff's Supplemental Petition filed 6/11/86. Verdict for Plaintiff 7/9/86. Judgment in favor of Plaintiff and against Defendants 7/22/86. Joint Stipulation of Dismissal filed 7/29/86. Witness fee taxed against Defendants 12/17/86.

Case #64: *Peggy Wunder, et al., v. United Services Automobile Association,* S 85-1551(NG), Southern District of Mississippi. Complaint for Breach of Uninsured Motorist Policy filed on 12/10/85. USAA was alleged to be a foreign insurance company. USAA's Answer was filed on 1/10/86. USAA denied that allegation but stated that it was a "foreign insurer association" and admitted jurisdiction based on diversity of citizenship. USAA's Amended Answer filed 4/7/86. USAA admitted diversity of citizenship but denied the amount in controversy. Agreed Order to Dismiss With Prejudice filed 11/25/86.

Case #65: *Victor H. Schramm v. United Services Automobile Association,* 85-2928, Western District of Pennsylvania. Petition for Removal filed by USAA on 12/13/85. USAA's Answer filed 1/29/86. Case settled 11/6/86.

Case #66: *Donald L. Horn and Rose M. Horn v. United Services Automobile Association, et al.*, CV-LV-85-1027-HDM, District of Nevada. Complaint for Tortuous Breach of Insurance Contract filed 12/5/85. First Amended Complaint 3/7/86. USAA's Answer filed 4/21/86. Stipulation to Dismiss filed 10/1/86. Dismissed With Prejudice 10/3/86.

Case #67: *United Services Automobile Association v. Earl Ah Moo, D.D.S., et al.*, 85-0523, District of Hawaii. USAA's Complaint for Declaratory Judgment filed 6/4/85. USAA alleged it was a Texas corporation and that "every issue of law and fact herein is wholly between citizens of different states." USAA's Scheduling Conference Statement filed 3/27/86, again alleged diversity of citizenship. Counterclaim against USAA filed 5/20/86. Alleged USAA was a Texas corporation. USAA's Answer to Counterclaim filed 6/2/86, admitted the truth of that allegation. USAA's Motion for Summary Judgment filed 3/31/86. Summary Judgment for USAA 8/1/86.

Case #68: *Sara Dicesara v. United Services Automobile Association*, 86-0532-A, Eastern District of Virginia. Complaint for Declaratory Judgment filed 5/7/86. USAA's Motion to Dismiss filed 6/23/86. USAA's Motion was uncontested and was granted 7/11/86. Case dismissed for lack of jurisdiction 7/11/86.

Case #69: *Glenn L. Brooks v. United Services Automobile Association*, CIV-86-848, Western District of Oklahoma. Complaint for bad faith breach of insurance contract filed on 4/16/86. USAA's Motion to Dismiss for lack of jurisdiction over the subject matter or in the alternative

a stay of the pending state court action filed 5/14/86. USAA's Motion granted 7/30/86.

Case #70: *Michael and Marilyn Wheeler v. Lance Harvey, James R. Harvey, and United Services Automobile Association,* 85-0394, District of Minnesota. Complaint for negligence and direct action against insurer filed 3/15/85. USAA was alleged to be a foreign corporation. USAA's Motion to Dismiss for failure to state a claim on which relief can be granted filed 6/18/85. USAA's Motion denied 9/11/85. The court's [sic] found that USAA was a Texas corporation licensed to do business in Minnesota. USAA's Answer filed 9/25/85 did not specifically admit that it was a corporation. Case was settled and dismissed 5/12/86.

Case #71: *United Services Automobile Association v. Parnell A. Rickerson and Gladys V. Rickerson,* C 85-2031-2-RPA, Northern District of California. USAA's Complaint for Declaratory Judgment filed on 5/17/85. Defendant's Answer filed 7/18/85. USAA's Motion for Summary Judgment filed 1/24/86. USAA's Motion granted 3/10/86. Taxation of costs in favor of USAA 4/15/86.

Case #72: *Henry A. Pridgen, as next friend for Henry A. Pridgen, III, a minor, v. United Services Automobile Association,* 84-247-ALB-AMER, Middle District of Georgia. USAA's Petition for Removal filed 11/14/84. USAA alleged that "Petitioners (sic) are residents and citizens of the State of Texas." Pridgen's Motion to Remand filed on grounds of lack of jurisdiction over the subject matter filed 11/20/84. Pridgen alleged that USAA was an unincorporated association and that "at the time of the filing of Defendant's

Petition for Removal of the action to this Court, both Plaintiff and Defendant were citizens of the State of Georgia." USAA's Brief in Opposition to Plaintiff's Motion to Remand filed 11/29/84. USAA stated that it was a reciprocal interinsurance exchange but alleged that for diversity purposes "USAA should be considered a citizen of Texas." Plaintiff's Motion to Remand denied 12/14/84. Stipulation for Dismissal With Prejudice filed 4/17/86. Judgment dismissing case 4/29/86.

Case #73: *Sandra A. Ruth, surviving spouse of Francis Dean Ruth v. United Services Automobile Association,* CIV-85-913-T, Western District of Oklahoma. Complaint for Breach of Uninsured Motorist Policy filed on 4/8/85. USAA was alleged to be a Texas corporation. USAA's Answer filed 5/10/85. USAA stated that it was without knowledge or information sufficient to form a belief as to the truth of that allegation. USAA's Motion to Dismiss for failure to join an indispensable party or in the alternative for change of venue filed 9/17/85. USAA's Motion denied 11/22/85. Amended Complaint adding claim of bad faith filed 9/17/85. USAA was again alleged to be a Texas corporation. USAA's Answer to Amended Complaint filed 9/26/85. USAA again claimed it was without knowledge or information sufficient to form a belief as to the truth of that allegation. Pre-Trial Conference 2/7/86. USAA's Motion to Dismiss for lack of jurisdiction over the subject matter on the grounds that it was an unincorporated association filed 3/31/86. The case was settled and plaintiff's Application for Order Dismissal With Prejudice filed and granted 4/30/86.

Case #74: *United Services Automobile Association v. General Electric Co.*, H-83-981, District of Connecticut. USAA's Compliant filed 11/22/83. USAA alleged it was a Texas corporation. General Electric's Answer filed 6/4/84. Stipulation of Dismissal filed 4/21/86.

IV. The following 29 cases were filed, or remained opened, after the *Neil* decision on 2/15/84, which warned USAA to stop abusing the Federal court processes, but which were closed before the Motion to Dismiss in *Tuck*.

Case #75: *Barbara Wong v. United Services Automobile Association*, 85-0755-P, District of Rhode Island. Complaint for bad faith breach of uninsured motorist policy filed 12/6/85. USAA was alleged to be a Texas corporation and the claims were alleged to be between citizens of different states. USAA's Answer was filed on 12/27/85. USAA admitted the truth of the first allegation, but alleged it was without knowledge and information sufficient to form a belief as to the truth of the second allegation. Dismissal stipulation filed 3/25/86.

Case #76: *Eddie Oliney v. Samuel Gardner, Morris Gardner, and United Services Automobile Association*, 85-5285A4, Eastern District of Louisiana. Complaint filed 11/15/85. USAA's Motion to State Proceedings and Motion to Dismiss filed 1/24/86. Case Order Stayed on 3/19/86.

Case #77: *Virginia Stephens and B. Milton Stephens v. Mary E. Harrell, et al., and United Services Automobile Association*, CIV-85-2372-A, Western District of Oklahoma. Complaint for breach of uninsured motorist policy against USAA filed

9/26/85. USAA was alleged to be a Texas corporation. USAA's Answer filed 10/24/85. Stephens' Motion to Dismiss USAA Without Prejudice filed 2/28/86. USAA dismissed without prejudice 3/17/86.

Case #78: *Ralph O. Brignon and Norma L. Brignon v. United Services Automobile Association*, 85-5053, Western District of Arkansas. Complaint for breach of uninsured motorist policy filed 3/20/85. USAA was alleged to be a Texas corporation. Amended Complaint filed 4/1/85. USAA's Answer filed 4/22/85. USAA admitted the truth of that allegation. USAA's Amendment to Pre-Trial Conference Information Sheet filed 1/24/86. USAA stated there were no objections to jurisdiction. Jury verdict for Plaintiffs 1/30/86. Judgment 2/6/86.

Case #79: *Timothy Healey, et al., v. United Services Automobile Association*, B-85-501, District of Connecticut. Complaint for breach of insurance contract filed 9/3/85. First Amended Complaint filed 9/12/85. Stipulation of Dismissal filed 1/8/86. Case dismissed 2/7/86.

Case #80: *Julia Ondre v. United Services Automobile Association*, 85-1785-CIV-T-15, Middle District of Florida. Complaint filed 11/14/85. USAA's Motion to Dismiss for improper venue or to transfer venue filed 12/5/85. Complaint dismissed as against USAA for failure to state a claim for relief 1/17/86.

Case #81: *Pauline Shaw v. United Services Automobile Association and Crawford & Co.*, 85-1051, District of Hawaii. USAA's Petition for Removal filed on 8/29/85. USAA alleged that it was a reciprocal interinsurance exchange and "was not and is not a citizen of the State of Hawaii."

USAA's Answer filed 8/30/85. USAA denied that it was a foreign corporation, but alleged that it was reciprocal interinsurance exchange. USAA's Amended Answer filed 9/11/85, made the same allegation. Stipulation for Dismissal With Prejudice filed 1/6/86.

Case #82: *Peggy Ryan and Eddy L. Sapir v. United Services Automobile Association, et al.*, 84-5709-J-6, Eastern District of Louisiana. USAA's Petition for Removal filed 11/29/84. Plaintiffs' Motion to Remand filed 2/14/85. Third-Party Complaint against USAA and City of Orleans filed 11/15/85. Second Supplemental Complaint filed 11/18/85. Further proceedings unknown.

Case #83: *George W. Conrad v. United Services Automobile Association*, 85-1285, Middle District of Tennessee. Complaint for bad faith breach of insurance contract filed 11/1/85. Case dismissed sua sponte by court for lack of jurisdiction over the subject matter on 11/12/85. Judgment 12/18/85.

Case #84: *William H. Quinn, Administrator of the Estate of Aaron Michael Quinn v. United Services Automobile Association*, 85-187, District of Vermont. Complaint for breach of underinsured motorist policy filed 7/22/85. USAA was alleged to be "a reciprocal or interinsurance exchange or corporation existing under the laws of the State of Texas." USAA's Motion to Dismiss for lack of jurisdiction over the subject matter on grounds that USAA was an unincorporated association filed 10/24/85. Case settled and dismissed with prejudice 12/2/85.

Case #85: *Margaret Cohen, as Executrix of the Estate of Carl H. Cohen, v. United Services Automobile Association,* 85-0085, Middle District of Georgia. USAA's Petition for Removal filed 4/1/85. Case submitted to the court on briefs. Judgment for USAA 9/16/85.

Case #86: *United Services Automobile Association v. Jeffrey Sandholm, et al.,* 85-C-112-B, Northern District of Oklahoma. USAA's Complaint for Declaratory Judgment filed 2/7/85. USAA alleged that it was a Texas corporation and that there was complete diversity of citizenship. Defendant's Answer filed 2/28/85. USAA's Motion for Summary Judgment 7/31/85. USAA's Motion granted 12/31/85.

Case #87: *Joseph Boardman and Henry Boardman v. United Services Automobile Association,* S 81-0219 (N), Southern District of Mississippi. Complaint for breach of uninsured motorist policy filed 5/19/81. Boardman's Motion for Partial Summary Judgment filed 8/5/81. USAA's Motion for Summary Judgment 9/4/81. Boardman's Motion sustained, USAA's denied 11/1/82. USAA's Motion to Amend Judgment to allow an interlocutory appeal filed 1/14/83. Amended Judgment 1/28/83. Fifth Circuit determined to certify question to Mississippi Supreme Court 9/14/84. 742 F.2d 847. Question certified 10/23/84. 763 F.2d 663. Question answered 5/22/85. 470 So.2d 1024. Judgment vacated and case remanded on 8/19/85. 768 F.2d 718. Final judgment for USAA 12/9/85.

Case #88: *United Services Automobile Association v. William Massey, et al.,* J 85-0450(L), Southern District of Mississippi. USAA's Complaint for Declaratory Judgment filed 5/10/85. USAA's

Motion for Summary Judgment 10/2/85. USAA's Motion granted 11/12/85. Final judgment 11/19/85.

Case #89: *Eddie Oliney v. Samuel Gardner, Morris Gardner and United Services Automobile Association,* 84-3853D, Eastern District of Louisiana. Complaint for negligence and direct action against Defendant's insurer filed 8/6/84. USAA's Motion to Dismiss for lack of jurisdiction on the grounds that there was not complete diversity of citizenship as Plaintiff Oliney and Defendant Gardner were both citizens of the State of Louisiana at the time the previous case was commenced, filed 1/11/85. USAA's Motion granted 2/13/85. Oliney's Notice of Appeal filed 3/11/85. Fifth Circuit ruled that second suit which attempted to plead new facts related back to filing of first suit and affirmed the judgment on 9/20/85. Rehearing denied 10/28/85. 771 F.2d 856. Cost on appeal taxed 11/7/85.

Case #90: *Iva Jean Holcomb and Curtis Holcomb v. Donald Davis, Jackie Davis and United Services Automobile Association,* 85-C-652-E, Northern District of Oklahoma. Complaint for Negligence and personal injury protection benefits filed 7/11/85. USAA was alleged to be a Texas corporation and diversity of citizenship was alleged to exist between the parties. USAA's Motion to Dismiss for failure to state a claim upon which relief can be granted filed 8/2/85. Case settled and Joint Application of Parties for Dismissal filed 12/30/85. Dismissed 1/7/86.

Case #91: *Alice Elizabeth Webb, Administratrix of the Estate of Sharon Lee Cooper v. United Services Automobile Association,* 85-0669-A, Eastern District of Virginia. Complaint for Declaratory

Judgment filed 6/7/85. USAA was alleged to be a reciprocal interinsurance exchange. USAA's Answer filed 7/3/85. USAA admitted the truth of that allegation. USAA's Motion to Dismiss or Stay Proceedings filed 7/3/85. USAA's suggestion of lack of jurisdiction of the subject matter on the grounds that USAA is an unincorporated association filed 8/1/85. Case dismissed with prejudice on motion of Webb 8/2/85.

Case #92: *United Services Automobile Association v. Clennard E. McCorkle,* 85-5365, Southern District of Illinois. USAA's Complaint for breach of insurance contract filed 6/10/85. Case dismissed 8/24/85 for failure to effect service.

Case #93: *Mr. & Mrs. Peter Wolniewicz, et al., v. Ernest P. Richard, et al., and United Services Automobile Association,* 82-1346M. Eastern District of Louisiana. Complaint filed 4/5/82. USAA's Answer and Cross-Claim filed 6/29/82. Pre-Trial Order filed 2/28/85. USAA's Pre-Trial Memo filed 3/12/85. Jury trial began 5/13/85. USAA's Motion for Mistrial granted 5/14/85. Case dismissed as to USAA on Plaintiffs' Motion 8/5/85. Sixty Day Order of Dismissal 8/14/85.

Case #94: *United Services Automobile Association v. Lawrence Rex Stinson and Kurt Lustbaum,* 85-0034-G, Southern District of California. USAA's Complaint for Declaratory Judgment 1/8/85. USAA alleged that it was a reciprocal insurance exchange and a citizen of the State of Texas. USAA sought a declaration that it had no duty to defend Stinson in a pending state action or to indemnify Stinson for damages which might be awarded against him and in favor of Lustbaum in the action. Stinson's Answer and Cross-Claim against USAA filed 4/10/85.

Lustbaum's Answer and Cross-Claim against USAA filed 4/16/85. Stipulation for Dismissal dismissing USAA's Complaint With Prejudice and other claims without prejudice 7/12/85. Order entered 7/18/85.

Case #95: *Melinda Schesser Grader v. United Services Automobile Association*, 83-1758, District of Kansas. Complaint filed 8/10/83. USAA's Answer filed 10/20/83. USAA's Amended Answer filed 4/10/84. Pre-Trial Conference Order filed 1/16/85. USAA's Motion for Summary Judgment filed 1/3/85. Grader's Motion for Partial Summary Judgment filed 3/4/85. Order of Dismissal of Motions for Summary Judgment 4/1/85. Journal Entry of Dismissal with Prejudice 8/11/85.

Case #96: *Commercial Union Insurance Companies v. John Elson, Sally Elson and United Services Automobile Association Insurance Company*, 84-Z-2176, District of Colorado. USAA's Petition for Removal filed 11/13/84. USAA alleged that it was a reciprocal interinsurance exchange and that "diversity of citizenship of the parties, therefore, exists." Stipulation for Dismissal With Prejudice filed 5/3/85. Order of Dismissal 5/7/85.

Case #97: *United Services Automobile Association v. Kramer Chemical, Inc., et al.*, CV-80-1916, Eastern District of New York. USAA's Complaint filed 7/11/80. USAA's Reply filed 9/30/80. Consolidated with 79-C-712 on 10/2/80. USAA's Answer to Third-Party Complaint filed 1/5/81. CV-80-1916 severed and set for trial 3/31/83. Order of Discontinuance 4/3/85. Stipulation of Discontinuance 11/14/85.

Case #98: *United Services Automobile Association v. Scott Robelen,* CIV-84-1275-E, Western District of Oklahoma. USAA's Complaint for Declaratory Judgment filed 5/21/84. USAA alleged it was a reciprocal interinsurance exchange and that diversity of citizenship existed between the parties. USAA's Notice of Change of Firm Name to Niemeyer, Edmonds, Noland, Alexander & Hargrave filed 9/14/84. Pre-Trial Conference Memo 11/19/84. Stipulation for Dismissal With Prejudice 3/1/85. Dismissed 3/4/85.

Case #99: *Theodore Carter and Verdell Carter v. Scott Mattson, Ronald Mattson, and United Services Automobile Association,* 83-6224H, Eastern District of Louisiana. Complaint filed 12/23/83. USAA's Answer filed 3/2/84. Sixty Day Order of Dismissal filed 2/8/85. Order Dismissing Case With Prejudice on Plaintiffs' Motion 2/26/85.

Case #100: *Leroy King and Barbara King v. United Services Automobile Association,* 82-3678, District of New Jersey. Complaint for breach of insurance contract filed 11/3/82. USAA was alleged to be a Texas corporation. USAA's Answer was filed 1/21/83. USAA admitted the truth of that allegation. The final Pre-Trial Stipulation and order filed 4/10/84, stated the jurisdiction was based on diversity of citizenship and that USAA was an insurance carrier located in the State of Texas. Case settled 2/26/85.

Case #101: *Lumbermen's Mutual Casualty Co. and Ari Kiev, M.D., v. United Services Automobile Association,* CIV-84-3385-L, District of New Jersey. Complaints filed 8/17/84. USAA's Motion to Dismiss filed 11/28/84. Order of Dismissal filed 1/28/85.

Case #102: *Norma Viboud Ruiloba v. A. Berlingery Vicenty*, 83-2384-PG, 9/30/83, District of Puerto Rico. Complaint filed on 9/30/83. USAA's Answer filed 4/4/84. Case settled 12/20/84.

Case #103: *Eddie Oliney v. Samuel Gardner, Morris Gardner and United Services Automobile Association*, 82-4031-A(5), Eastern District of Louisiana. Complaint filed 9/10/82. First Amended Complaint filed 1/19/83. USAA's Answer filed 3/17/83. Answer to Amended Complaint 4/18/83. Second Amended Complaint filed 5/2/84. USAA's Answer to Second Amended Complaint. USAA filed a motion to Dismiss for lack of complete diversity on the grounds that at the time the action was filed, the Plaintiff, Eddie Oliney, and the Defendant, Samuel Gardner, were both citizens of the State of Louisiana. The Plaintiff moved to Missouri in October, 1982. Motion to Dismiss granted 9/5/84. Plaintiff's Motions for Reconsideration and for New Trial filed 9/13/84. Denied 11/9/84. Plaintiff's Notice of Appeal filed 10/05/84. Appeal dismissed for want of prosecution 12/13/84.

Case #104: *United Services Automobile Association v. Alan E. Foster and Elizabeth A. Foster*, 84-916-CIV-T-13, Middle District of Florida. USAA's Complaint for Declaratory Judgment filed 7/10/84. USAA alleged that it was a Texas corporation and that it did not share the same state citizenship with either of the defendants. Defendants' Motion to Dismiss filed 9/20/84, alleged that the Court lacked jurisdiction of the subject matter and that the complaint failed to state a claim upon which relief could be granted

on the grounds that the Defendants had not instituted a suit for coverage, and that therefore no case of controversy existed. USAA's Memorandum of Law in Opposition filed 9/28/84. USAA's Notice of Voluntary Dismissal filed 11/1/84.

Case #105: *United Services Automobile Association v. Ronald L. Brown, et al.*, 84-1471-K(M), Southern District of California. USAA's Complaint for Interpleader and Declaratory Judgment filed 6/22/84. USAA alleged that it was a reciprocal interinsurance exchange with its principal place of business in the State of Texas. Defendants' Petition for Order requiring Plaintiff to arbitrate controversy and to dismiss action filed 9/17/84. USAA's Opposition filed 10/5/84. Motion granted and case dismissed 10/30/84.

Case #106: *Phyllis V. Pauley v. United Services Automobile Association*, J 84-0382(L), Southern District of Mississippi. Complaint for bad faith breach of an uninsured motorist policy filed 5/15/84. USAA was alleged to be an unincorporated association organized under the laws of the State of Texas and a reciprocal interinsurance exchange. The action was alleged to be between citizens of different states. USAA's Answer filed 6/13/84, admitted the truth of those allegations. Case settled and final judgment entered 10/31/84.

Case #107: *Evelyn Nancy Smith, as Administratrix, C.T.A., of the Estate of Herbert Thomas Smith v. United Services Automobile Association, Inc.*, 84-0614, Southern District of Carolina. USAA's Petition for Removal filed 3/27/84.

Case settled and dismissed without prejudice 8/17/84. Dismissed with prejudice 10/30/84.

Case #108: *Winifred D. Bozardt, et al., v. United Services Automobile Association,* C 82-2660A, Northern District of Georgia. USAA's Petition for Removal filed 11/24/82. USAA alleged it was a reciprocal interinsurance exchange of the State of Texas. Amendment to Petition 12/9/82. USAA's Motion for Summary Judgment filed 3/5/84. Granted 9/6/84. Judgment 9/10/84.

Case #109: *Mary E. Spiess and Raymond L. Spiess v. United Services Automobile Association,* A 83-610CIV District of Alaska. USAA's Petition for Removal filed 12/14/83. Stipulation for Dismissal with Prejudice filed 6/22/84. Order granting dismissal 6/26/84.

Case #110: *Marie Isbell and Jimmy Isbell v. United Services Automobile Association,* 83-5627, Easter District of Louisiana. Complaint filed 11/17/83. Pre-Trial Order 6/11/84. USAA's Answer filed 6/28/84. Settled 6/28/84.

Case #111: *Sandra K. Hughes v. United Services Automobile Association,* CIV-83-2960R, Western District of Oklahoma. Complaint for breach of uninsured motorist policy filed 11/30/83. USAA was alleged to be an insurance company organized under the laws of the State of Texas. USAA's Answer filed 12/19/83. Pre-Trial Order filed 3/2/84. USAA was alleged to be a Texas insurance company. Stipulation for Order of Dismissal filed 6/19/84. Order of Dismissal 6/26/84.

Case #112: *Blaise Andrew Horban v. Basin Drilling Corp., et al., and United Services Automobile Association,* CIV-83-1851-W, Western District of

Oklahoma. complaint filed 8/2/83. USAA's Answer filed 9/15/83. Pre-Trial Conference Memorandum 12/7/83. Stipulation for Order of Dismissal 6/6/84. Order of Dismissal With Prejudice 6/7/84.

Case #113: *Margaret Buchholz v. United Services Automobile Association,* EC 83-360-WK-P, Northern District of Mississippi. Complaint for breach of uninsured motorist policy filed 8/9/83. USAA was alleged to be a Texas corporation. USAA's Answer filed 9/16/83, acknowledged the truth of that allegation. Case settled and dismissed with prejudice 6/18/84.

Case #114: *Cynthia Lynn Frazier, et al., v. United Services Automobile Association,* 82-428R, Northern District of Georgia. USAA's Petition for Removal filed 11/29/82. USAA's Motion for Summary Judgment and Motion to Stay filed 1/27/84. USAA's Motion for Summary Judgment granted 6/15/84.

Case #115: *United Services Automobile Association v. Nelson Adams,* J 81-0416(B), Southern District of Mississippi. USAA's Complaint for Declaratory Judgment filed 8/27/81. Answer and Counterclaim filed 10/13/81. USAA's Answer to Counterclaim filed 11/13/81. Final judgment that homeowner's policy was void and USAA not liable to the defendant filed 4/18/84. Counterclaim dismissed with prejudice 4/18/84.

Case #116: *Austin W. Kiefer v. Thomas I. Magill, United Services Automobile Association, and Allstate Insurance Company,* J 83-973, Middle District of Louisiana; J. 83-0812(B), Southern District of Mississippi. Complaint filed 9/8/83. Case Transferred 11/3/83. USAA's Answer filed

12/7/83. Judgment of Dismissal Without Prejudice as to USAA 3/23/84. Final judgment of Dismissal With Prejudice 4/13/84.

Case #117: *United Services Automobile Association v. Robert W. Weston, et al.*, 84-C-112, District of Colorado. USAA's Complaint for Declaratory Judgment filed 1/13/84. USAA alleged that it was a Texas corporation and that there was diversity of citizenship between the parties. USAA's Motion Seeking Issuance of Injunction Staying State Action filed 1/13/84. Order Dismissing USAA's Complaint on the grounds that the alternative state remedy would be more efficacious 2/3/84.

Case #118: *Frederick O. Janssen v. United Services Automobile Association*, S 83-0387(N), Southern District of Mississippi. Complaint for breach of insurance contract filed 5/10/83. USAA's Motion to Dismiss for lack of *in personam* jurisdiction or in the alternative to transfer filed 6/13/83. Amended Motion to Dismiss 9/8/83. Motion granted for lack of in personam jurisdiction 10/14/83. Court ruled that it had no authority to transfer. Order of Dismissal 2/2/84.

V. The following 53 cases were filed, or remained opened, after the Second Circuit's decision in *Baer* on 6/27/74, which held that USAA as an unincorporated association could not be involved in diversity litigation, but which were closed before the decision in *Neil*:

Case #119: *Paul Silverstein v. United Services Automobile Association*, CIV-83-2166-E, Western District of Oklahoma. Complaint for bad faith breach of insurance policy filed 9/7/83. USAA was alleged to be a Texas corporation and it was alleged that there was diversity of citizenship

between the parties. USAA's Answer filed 9/27/83, admitted the diversity of citizenship, but alleged that USAA was a reciprocal insurance exchange. Pre-Trial Conference Memo filed by both parties 12/20/83. Stipulation for Order of Dismissal filed 1/16/84. Order of Dismissal 1/23/84.

Case #120: *James R. Daniel and United Services Automobile Association v. Dart Transit Company and Jimmy Greenfield, Jr.*, LR-C-83-0845, Eastern District of Arkansas. Complaint filed 9/29/83. USAA's Motion to Intervene for Purpose of Subrogation filed 1/5/84. USAA's Complaint in Intervention filed 1/16/84. The case was settled and dismissed 1/20/84.

Case #121: *Bituminous Fire & Marine Insurance Co. v. The Novogroder Companies, Inc., et al, and United Services Automobile Association*, 83-626-C, Southern District of Indiana. Complaint for breach of insurance contract and interpleader filed 5/3/83. USAA was alleged to be a Texas corporation and diversity of citizenship was alleged to exist. USAA's Answer filed 6/8/83. USAA admitted the truth of those allegations. USAA's Cross-Claim filed 8/1/83. USAA alleged it was a Texas corporation and that diversity of citizenship existed. Stipulation of Dismissal filed 12/30/83. Dismissal 1/4/84.

Case #122: *Suzanne Kahn v. United Services Automobile Association*, 81-1590D(4), Eastern District of Louisiana. Complaint for bad faith breach of insurance contract filed 4/22/81. Supplemental Amended Complaint filed 6/2/81. USAA's Answer filed 9/25/81. USAA's Motion to Dismiss on grounds of res judicata and failure to state a claim filed 11/18/81. USAA's Motion

granted 9/28/83. Plaintiff's Notice of Appeal filed 10/6/83. Judgment affirmed by Fifth Circuit 2/21/84.

Case #123: *The Estate of Mary Helen Stainkamp v. United Services Automobile Association,* 83-CIV-83-2959-E, Western District of Oklahoma. Complaint for breach of uninsured motorist policy filed 11/30/83. USAA was alleged to be an insurance company organized under the laws of the State of Texas. USAA's Answer filed 12/20/83. Stipulation for Order of Dismissal filed 12/29/83. Order of Dismissal 12/30/83.

Case #124: *Lucile McLand v. United Services Automobile Association,* H-82-0160(R), Southern District of Mississippi USAA's Petition for Removal filed 8/31/82. State Court Claim for uninsured motorist coverage. USAA's Answer filed 9/30/82. Pre-Trial 7/22/83. Final judgment dismissing case with prejudice 12/19/83.

Case #125: *United Services Automobile Association v. Sandra West, et al.,* 83-0053-K, Southern District of California. USAA's Complaint in Interpleader filed 1/6/83. Order Confirming Settlement filed 9/20/83.

Case #126: *Clotilde Gomez and Rafael Gomez v. Terrence L. Stubbs and United Services Automobile Association,* 82-5460K(3), Eastern District of Louisiana. Complaint filed 11/29/82. Answer filed 1/27/83. Order dismissing case for lack of prosecution 9/16/83. Joint Stipulation of Dismissal and Order dismissing case without prejudice 10/3/83.

Case #127: *United Services Automobile Association v. Charles Anderson, et al.,* J 83-0199(R), Southern District of Mississippi. Complaint for

Interpleader filed 3/16/83. Judgment for disbursement of funds 5/4/83.

Case #128: *David Lyle Jolkovsky, et al. v. White Fleet Cabs, Inc., et al., and United Services Automobile Association,* 81-4070, Eastern District of Louisiana. Complaint filed 10/9/81. USAA was alleged to be a foreign corporation. USAA's Answer filed 3/8/82. Settled and dismissed with prejudice 4/25/83.

Case #129: *United Services Automobile Association v. Allied Van Lines, Inc., and Wayne Agamie,* B 81-1941, District of Maryland. Petition for Removal filed 7/31/81. Case remanded to state court 4/25/83.

Case #130: *Estate of Diana Lynn Shine v. United Services Automobile Association,* S 79-0180(N), Southern District of Mississippi. Complaint for breach of uninsured motorist policy filed 5/14/79. USAA's Answer filed 5/25/79. Cause dismissed with prejudice 3/24/83.

Case #131: *Maria Travares v. United Services Automobile Association, et al.,* 82-0917-E, Southern District of California. Complaint for Declaratory Judgment filed 8/2/82. USAA's Answer filed 11/4/82. USAA's Motion for Dismissal filed 11/2/82. USAA's Motion granted and case dismissed for lack of subject matter jurisdiction on 2/16/83.

Case #132: *Christopher Gunn Haydon v. United Services Automobile Association,* 81-K-1434, District of Colorado. USAA's Petition for Removal filed 8/12/81. USAA alleged it was an interinsurance reciprocal exchange. Stipulation for Dismissal filed 1/26/83. Dismissed with prejudice 1/6/83.

Case #133: *United Services Automobile Association v. American Van & Storage, Inc.*, 80-2199(D), Eastern District of Louisiana. Complaint filed 6/13/80. USAA's Motion and Order of Dismissal 12/3/82.

Case #134: *Estate of Diana Lynn Shine v. United Services Automobile Association*, S 79-0125(C), Southern District of Mississippi. Complaint filed 3/20/79. USAA's Answer filed 5/21/79. Amended Complaint 7/27/79. USAA's Answer 8/13/79. Jury verdict for Plaintiff 3/10/81. Judgment 3/19/81. USAA's Motion for Judgment Notwithstanding the Verdict or alternatively a new trial filed 3/19/81. USAA's Motion denied 5/15/81. USAA's Notice of Appeal filed 5/27/81. USAA's Motion for Order Granting Stay filed 5/27/81. Granted 6/2/81. Judgment affirmed by Fifth Circuit on 8/10/82. Judgment ordering final distribution and cancellation of judgment 9/7/82.

Case #135: *United Services Automobile Association v. Wesley G. Dubose, et al.*, S 78-0074(C), Southern District of Mississippi. USAA's Complaint for Declaratory Judgment filed 3/21/78. USAA's Motion for Preliminary Injunction staying state court proceedings filed 4/4/78. Order sustaining USAA's Motion 5/18/78. Judgment against USAA 3/12/79. USAA's Notice of Appeal filed 4/4/79. Opinion and Mandate from Fifth Circuit affirming judgment filed 11/9/79.

Case #136: *Southern Home Insurance Company v. Johnny Hughes, Jr., et al., and United Services Automobile Association*, CV-482-68, Southern District of Georgia. Complaint for Declaratory Judgment

filed 2/17/82. USAA's Answer filed 3/12/82. Case dismissed with prejudice 7/20/82.

Case #137: *Kenneth W. Rockett v. United Services Automobile Association,* J 81-0538(R), Southern District of Mississippi. USAA's Petition for Removal filed 11/16/81. Judgment of Dismissal with Prejudice 6/10/82.

Case #138: *Loyd K. Thomas and Gayle M. Thomas v. United Services Automobile Association,* 81-416-C, Eastern District of Oklahoma. USAA's Petition for Removal filed 10/26/81. Stipulation and Order of Dismissal 6/30/82.

Case #139: *Daniel R. Walley Sr., v. United Services Automobile Association, et al.,* H 79-0136(R), Southern District of Mississippi. USAA's Petition for Removal filed 8/31/79. USAA alleged that it was a reciprocal interinsurance exchange and that there was diversity of citizenship. USAA's Answer and Cross-Claim filed 9/21/79. Order of Dismissal 5/6/81. USAA's Amended Cross-Claim filed 5/18/81. Judgment of Dismissal with Prejudice on 4/29/82.

Case #140: *A. Frederick C. Hakkinen v. United Services Automobile Association,* 81-953, District of Oregon. Complaint for Declaratory Judgment filed 10/13/81. USAA was alleged to be a Texas corporation. USAA's Answer filed 11/5/81, admitted the truth of that allegation. USAA's Motion for Summary Judgment for interpretation of the policy filed 12/9/81. Case dismissed with prejudice for lack of jurisdiction 1/8/82. Judgment corrected to dismissal without prejudice for lack of jurisdiction 1/22/82.

Case #141: *Margaret Mullahy v. United States Services Automobile Association, et al.,* 80-4942-K,

Eastern District of Louisiana. Complaint filed 12/16/80. USAA's Answer filed 4/3/81. Sixty Day Order of Dismissal 4/7/82. Case dismissed with prejudice 4/30/82.

Case #142: *Franklin E. Smith, Sr. v. Earl J. Ortiz, et al., and United Services Automobile Association,* 79-CV-327, Northern District of New York; 80-1761, Middle District of Louisiana. Complaint filed 5/17/79. USAA's Motion to Dismiss and Transfer Venue filed 7/30/79. Granted 11/7/79. Transferred 11/17/80. Order dismissing case with prejudice 6/11/81.

Case #143: *United Services Automobile Association v. Universal Carloading and Distributing Co.,* 80-1098-2, District of South Carolina. Petition for Removal filed 6/9/80. Case settled 3/31/81. Order of Dismissal With Prejudice 4/15/81.

Case #144: *Anna Marie Shaddinger, et al., v. Bryan M. Gowland, et al. and United Services Automobile Association,* 78-4264, Eastern District of Louisiana. Complaint filed 12/28/78. USAA's Answer filed 4/6/79. jury verdict for defendants 4/10/81. Judgment 4/21/81.

Case #145: *Ramon Feliciano, et al., v. United Services Automobile Association,* 78-2464, District of Puerto Rico. Complaint filed 12/12/78. Judgment for USAA 3/19/80. Notice of Appeal filed 4/18/80. Judgment affirmed by First Circuit on 4/8/81. 646 F.2d 695. Mandate 4/29/81.

Case #146: *Paul W. Johnson v. Morris V. Blystone and United Services Automobile Association,* H-80-2243, Southern District of Texas. Complaint filed 4/6/80. USAA's Motion to Dismiss filed 10/22/80. Motion granted 3/23/81.

Case #147: *Dan H. Singley, Jr., v. United Services Automobile Association,* J 80-0114(N), Southern District of Mississippi. USAA's Petition for Removal of breach of uninsured motorist claim filed 3/5/80. Settled and dismissed 2/4/81.

Case #148: *United Services Automobile Association v. James H. Diggs and Patricia J. Diggs,* 79-3001, Western District of Arkansas. USAA's Complaint for Declaratory Judgment filed 1/9/79. Counterclaim filed 8/31/79. USAA's Reply 9/10/79. Stipulation for Dismissal 12/16/79. Order of Dismissal 12/17/79.

Case #149: *John R. Rhodes, Jr., v. Jay Sanford Parrott, and United Services Automobile Association,* 78-580-D, Eastern District of Louisiana. Complaint filed 2/21/78. USAA's Answer filed 5/23/78. USAA's Motion to Dismiss filed 9/9/80. Judgment in favor of defendants 11/7/80.

Case #150: *Robert J. Byrd v. Robert Corneal and United Services Automobile Association,* 79-2826-H, Eastern District of Louisiana. Complaint filed 7/19/79. USAA was alleged to be a foreign insurance company and there was alleged to be diversity of citizenship between the parties. USAA's Answer filed 9/10/79, alleged lack of jurisdiction over the subject matter because diversity of citizenship did not exist. The Defendants' Motion to Dismiss filed 10/2/79, alleged that the Defendant, Robert Corneal, was a citizen of the State of Louisiana, and that diversity of citizenship did not exist between that Defendant and the Plaintiff. Defendant's Motion to Dismiss granted without opposition 10/23/80.

Case #151: *William Todd Gould v. Jeremy Y. Kleinberger and United Services Automobile Association*, 79-3495-J, Eastern District of Louisiana. Complaint filed 9/10/79. USAA's Answer filed 11/28/79. Order of Sixty Day Dismissal filed 6/23/80. Case dismissed with prejudice 7/25/80.

Case #152: *Jack E. Russell and Great American Insurance Co. v. United Services Automobile Association*, NC-78-0108, District of Utah. Complaint filed 12/8/78. USAA's Answer filed 1/19/79. Pre-Trial Order filed 12/27/79. Stipulation and Order of Dismissal filed 1/23/80.

Case #153: *Lewis A. Whitten v. United Services Automobile Association*, 78-248-C, Eastern District of Oklahoma. USAA's Petition for Removal filed 8/10/78. Pre-Trial Conference Memorandum 10/19/79. Order transferring case from Judge Cook to Judge Seay 11/21/79. Whitten's motion to Dismiss 12/19/79. USAA's Response 12/20/79. Order granting Whitten's Motion to Dismiss Without Prejudice 1/7/80.

Case #154: *George G. Villere, as Administrator of the Estate of his minor child, Christopher Villere v. United Services Automobile Association*, 79-1104-K, Eastern District of Louisiana. Complaint filed 3/26/79. USAA's Answer filed 5/25/79. Case dismissed with prejudice 11/20/79.

Case #155: *Katherine Blair v. United Services Automobile Association*, 79-67, Middle District of Pennsylvania. Complaint filed 1/16/79. USAA's Answer 2/7/79. Stipulation and Dismissal 10/2/79.

Case #156: *Syble Long and Glenn Long v. Ken H. Phillips, Katheryn L. Nutt and United Services*

Automobile Association, 77-1536-B, Eastern District of Louisiana. Complaint filed 5/17/77. USAA's Answer 7/15/77. Plaintiffs' Motion and Order of Dismissal with Prejudice 9/13/79.

Case #157: *Carolina Casualty Insurance Company v. Sheradon K. Hawks, et al., and United Services Automobile Association*, S 78-0021(N), Southern District of Mississippi. Complaint for Interpleader filed 1/26/78. USAA's Answer filed 3/1/78. USAA's Amended Answer 3/15/78. Summary Judgment 7/5/78. Case closed 7/17/79.

Case #158: *Lumbermen's Mutual Casualty Co. v. John R. Janack, et al., and United Services Automobile Association*, CV-477-245, Southern District of Georgia. Complaint for Declaratory Judgment filed 11/4/77. USAA's Answer filed 11/20/77. Summary Judgment for Plaintiff 2/20/77.

Case #159: *United Services Automobile Association v. Mark R. Staiger*, H-76-467, District of Connecticut. Complaint for Declaratory Judgment filed 12/2/76. Stipulation of Dismissal 4/3/78.

Case #160: *American Empire Insurance Co., United Services Automobile Association, and State Farm Fire & Casualty Co. v. ITT General Controls, Inc., et al.*, 76-F-281, District of Colorado. Complaint filed 3/11/76. USAA alleged that it was a Texas corporation and that there was diversity of citizenship. Amended Complaint filed 9/14/77. USAA again alleged it was a Texas corporation. Stipulation and Dismissal 3/6/78.

Case #161: *United Services Automobile Association v. Germantown Savings Bank, et al.*, 78-64, Eastern District of Pennsylvania. Complaint for

Interpleader filed 1/9/78. Memorandum Opinion 4/19/78. 449 F. Supp. 901.

Case #162: *Myrtle Baird v. United Services Automobile Association*, CV-177-35, Southern District of Georgia. Complaint filed 3/1/77. USAA's Answer filed 3/24/77. USAA's Motion to Dismiss filed 3/24/77. USAA's Motion for Order Compelling Plaintiff to make election between lawsuits filed 3/24/77. USAA's Motion for Summary Judgment 10/17/77. Granted 11/14/77. Baird's Motion for Reconsideration 12/14/77. Denied 1/11/78. Notice of Appeal 2/14/78. Baird's Voluntary Dismissal of Notice of Appeal 2/28/78.

Case #163: *Michael Jerome Williams by Myrtle Baird v. United Services Automobile Association*, CV-177-34, Southern District of Georgia. Complaint filed 3/1/77. USAA's Answer and Motion to Dismiss filed 3/24/77. USAA's Motion for Summary Judgment filed 10/17/77. Granted 11/14/77. Plaintiffs' Motion for Reconsideration filed 12/14/77. Denied 1/11/78. Notice of Appeal filed 2/14/78. Plaintiffs' Voluntary Dismissal of Notice of Appeal 2/28/78.

Case #164: *United Services Automobile Association v. Frank D. Middleton, et al.*, C 76-112R, Northern District of Georgia. USAA's Complaint for Declaratory Judgment filed in 1976. USAA's Motion for Summary Judgment denied 2/9/78. 77 F.R.D. 660.

Case #165: *United Services Automobile Association v. Josef F. Zimmerman and Eugene V. Stewart*, 75 C-2198, Eastern District of New York. USAA's Complaint for Declaratory Judgment filed 12/31/75. USAA's Motion for Summary Judgment filed 4/11/77. Granted 8/18/77.

Case #166: *Myrtle Baird v. Michael Jerome Williams and United Services Automobile Association,* CV175-36, Southern District of Georgia. Garnishment Summons filed 3/26/75. USAA's Answer filed 5/9/75. USAA's Motion to Dismiss filed 5/9/75. USAA's Motion for Summary Judgment filed 2/27/76. USAA's Motion for Summary Judgment granted 3/26/76. Order vacated and USAA's Motion denied 7/16/76. USAA's Second Motion for Summary Judgment filed 8/16/76. Baird's Motion for Voluntary Dismissal 3/3/77.

Case #167: *Martha A. O'Keefe v. Rufus A. Marbury, et al., and United Services Automobile Association,* H 75-864, District of Maryland. Complaint filed 6/27/75. USAA's Answer filed 12/1/75. Stipulation and Order dismissing with prejudice 5/6/77.

Case #168: *United Services Automobile Association v. John M. Vissotzky, et al.,* C-76-324, Eastern District of Washington. USAA's Complaint for Declaratory Judgment filed 12/30/76. Stipulation for Dismissal 3/21/77.

Case #169: *United Services Automobile Association and David G. Humphrey v. Glens Falls Insurance Company,* 14689, District of Connecticut. USAA's Complaint filed 10/26/71. Answer and Cross-Claim filed 1/29/73. USAA Reply and Answer to Cross-Claims. Judgment for Glens Falls against USAA. 429 F. Supp. 101. USAA's Notice of Appeal filed 10/4/76. Judgment affirmed by Second Circuit filed 3/24/76.

Case #170: *James A. O'Conner v. Dorthy D. Terry and United Services Automobile Association,* 75-1367E(B), Eastern District of Louisiana. Complaint filed 5/6/75. USAA's Motion to Dismiss

for absence of diversity of citizenship filed 4/21/76. Granted without opposition 7/16/76.

Case #171: *United Services Automobile Association v. Linda D. Lour Johnson and Leroy D. Johnson,* 74-87-C6, District of Kansas. USAA's Complaint filed 5/8/74. USAA alleged it was a reciprocal insurance association. USAA's Motion for Default Judgment filed 6/20/74. Journal Entry of Judgment 7/18/74.

EXHIBIT "B"

LIST OF CASES REMOVED BY
USAA TO FEDERAL COURT

(1) Cases active after the *Tuck* decision of *10/14/88*:

Case #4: *Stout v. USAA,* Mid. La., 9/88 – 1/90
Case #8: *Liles v. USAA,* Northern Miss., 11/86 – 10/89
Case #9: *Eason v. USAA, Northern Geo., 3/89 – 6/89*
Case #15: Patton v. USAA, Western La., 8/87 – 3/89

(2) Cases active after the Claims Department Bulletin dated *5/2/88*:

Case #24: *Dulock v. USAA,* Northern Geo., 7/87 – 9/88
Case #27: *McGuire v. USAA,* Nevada, 8/87 – 8/88
Case #30: *Liles v. USAA,* Northern Miss., 11/86 – 5/88

(3) Cases active after Motion to Dismiss in *Tuck* of *4/15/86*:

Case #41: *Barnes v. USAA*, Eastern Ark., 11/87 – 1/88
Case #43: *List v. USAA*, Hawaii, 3/87 – 11/87
Case #44: *Moore v. USAA*, Southern Miss., 2/85 – 10/87
Case #45: *Edwards v. USAA*, Southern Miss., 9/87 – 9/87
Case #48: *Bradley v. USAA*, Hawaii, 3/87 – 8/87
Case #55: *McCorkle v. USAA*, Southern Ill., 8/85 – 6/87
Case #57: *Rogers v. USAA*, Northern Geo., 10/86 – 5/87
Case #63: *Fletcher v. USAA*, Western La., 4/85 – 12/86
Case #65: *Schramm v. USAA*, Western Penn., 12/85 – 11/86
Case #72: *Pridgen v. USAA*, Middle Geo., 11/84 – 4/86

(4) Cases active after the *Neil* decision of *2/15/84*:

Case #81: *Shaw v. USAA*, Hawaii, 8/85 – 1/86
Case #82: *Ryan v. USAA*, Eastern La., 11/84 – 11/85
Case #85: *Cohen v. USAA*, Middle Geo., 4/85 – 12/85
Case #96: *Commercial Union v. USAA*, Colo., 11/84 – 5/85
Case #107: *Smith v. USAA*, S. Carolina, 3/84 – 10/84
Case #108: *Bozardt v. USAA*, Northern Geo., 11/82 – 9/84
Case #109: *Spiess v. USAA*, Alaska, 12/83 – 6/84
Case #114: *Frazier v. USAA*, Northern Geo., 11/82 – 6/84

(5) Cases active after the *Baer* decision of *6/27/74:*

Case #132: *Haydon v. USAA,* Colorado, 8/81 – 1/83
Case #137: *Rockett v. USAA,* Southern Miss., 11/81 – 6/82
Case #138: *Thomas v. USAA,* Eastern Okla., 10/81 – 6/82
Case #139: *Walley v. USAA,* Southern Miss., 8/79 – 4/82
Case #147: *Singley v. USAA,* Southern Miss., 3/80 – 2/81
Case #153: *Whitten v. USAA,* Eastern Okla., 8/78 – 1/80

EXHIBIT "C"

LIST OF CASES FILED BY USAA IN FEDERAL COURT

Note: Includes cases where USAA intervened as Plaintiff (*) or was named as real party in interest by the Defendant (•).

(1) Cases after the *Tuck* decision of *10/14/88*:

Case #1: *USAA v. Arey,* Western Virg., 7/89 – open
Case #3: *USAA v. Barger,* Northern Ohio, 11/88 – 8/90
Case #7: *USAA v. Hawaiian Ins.,* Hawaii, 11/84 – 11/89
Case #12: *USAA v. Evangelista,* E. Penn., 11/87 – 4/89

(2) Cases active after the Claims Department Bulletin dated *5/2/88*:

Case #23: *USAA v. Jeser,* New Jersey, 5/88 – 9/88
Case #25: *USAA v. Fugua Ind.,* Western Okla., 6/86 – 9/88
Case #26: *USAA v. Weappa,* Northern Ala., 2/86 – 9/88

Case #28: *USAA v. Burlinson* [sic], Northern Geo., 7/88 – 7/88
Case #31: *USAA v. Stryker,* Southern Calif., 11/86 – 5/88
Case #33: *USAA v. Vaughn,* Northern Miss., 1/86 – 5/88

(3) Cases active after the Motion to Dismiss in *Tuck* of *4/15/86*:

•Case #38: *USAA v. Rollins Protect.,* E. Virg., 7/81 – 2/88
Case #50: *USAA v. Krieger,* Northern Geo., 7/86 – 7/87
Case #52: *USAA v. Cregor,* Northern Ill., 4/85 – 7/87
Case #62: *USAA v. Guzman,* Western Wash., 4/85 – 1/87
Case #67: *USAA v. Ah Moo,* Hawaii, 6/85 – 8/86
Case #71: *USAA v. Rickerson,* North. Calif., 5/85 – 4/86
Case #74: *USAA v. General Electric,* Conn., 11/83 – 4/86

(4) Cases active after the *Neil* decision of *2/15/84*:

Case #86: *USAA v. Sandholm,* Northern Okla., 2/85 – 12/85
Case #88: *USAA v. Massey,* Southern Miss., 5/85 – 11/85
Case #92: *USAA v. McCorkle,* Southern Ill., 6/85 – 8/85
Case #94: *USAA v. Stinson,* Southern Calif., 1/85 – 7/85
Case #97: *USAA v. Kramer Chemical,* E. N.Y., 7/80 – 4/85
Case #98: *USAA v. Robelen,* Western Okla., 5/84 – 3/85
Case #104: *USAA v. Foster,* Middle Fla., 7/84 – 11/84

Case #105: *USAA v. Brown*, Southern Calif., 6/84 – 10/84

Case #115: *USAA v. Adams*, Southern Miss., 5/83 – 2/84

Case #117: *USAA v. Weston*, Colorado, 1/84 – 2/84

(5) Cases active after the *Baer* decision of 6/27/74:

*Case #120: *USAA v. Dart*, Eastern Ark., 9/83 – 1/84

Case #125: *USAA v. West*, Southern Calif., 1/83 – 10/83

Case #127: *USAA v. Anderson*, Southern Miss., 3/83 – 5/83

Case #133: *USAA v. American Van*, East La., 6/80 – 12/82

Case #135: *USAA v. Dubose*, Southern Miss., 3/78 – 8/82

Case #148: *USAA v. Diggs*, Western Ark., 1/79 – 12/80

Case #159: *USAA v. Staiger*, Connecticut, 11/76 – 4/78

Case #160: *USAA v. ITT Gen.*, Colorado, 3/76 – 3/78

Case #161: *USAA v. Germantown Sav.*, E. Penn., 1/78 – 2/78

Case #164: *USAA v. Middleton*, Northern Geo., '76 – 2/78

Case #165: *USAA v. Zimmerman*, Eastern N.Y., 12/75 – 8/77

Case #168: *USAA v. Vissotzky*, Eastern Wash., 12/76 – 3/77

Case #169: *USAA v. Glens Falls Ins.*, Conn., 10/71 – 3/77

Case #171: *USAA v. Johnson*, Kansas, 5/74 – 7/74

EXHIBIT "D"

LIST OF CASES FILED AGAINST USAA AS DEFENDANT IN FEDERAL COURT

Note: Includes cases in which USAA intervened as Defendant (*) or in which USAA filed a counterclaim or cross-claim (•).

(1) Cases active after the *Tuck* decision of *10/14/88*:

Case #2: *Ins. Co. of Penn. v. USAA*, Nevada, 5/89 – open
*•Case #5: *Pacific Int'l v. USAA*, Hawaii, 3/89 – 11/89
Case #10: *Mucha v. USAA*, Southern Miss., 9/87 – 5/89
Case #11: *Smith v. USAA*, E. Missouri, 2/88 – 4/89
Case #13: *Herrmann v. USAA*, Western Texas, 3/87 – 4/89
Case #16: *Dennis v. USAA*, Western Okla., 11/88 – 1/89
Case #17: *Lovelace v. USAA*, Western Okla., 7/88 – 1/89
Case #18: *Hartford Ins. v. USAA*, N. Geo., 2/88 – 1/89
Case #19: *Morillas v. USAA*, Western La., 8/88 – 12/88
Case #20: *Porter v. USAA*, Northern Ala., 2/88 – 12/88
Case #21: *Integrity Ins. v. USAA*, M. Tenn., 1/87 – 11/88
Case #22: *O'Brien v. USAA*, Northern Geo., 5/88 – 10/88

(2) Cases active after the Claims Department Bulletin dated *5/2/88*:

*Case #29: *Maloney v. USAA, Maryland*, 8/88 – 5/88
Case #32: *Vazquez v. USAA*, Puerto Rico, 5/86 – 5/88

Case #34: *Vaughn v. USAA*, Northern Miss., 12/84 – 5/88
Case #35: *Vaughn v. USAA*, Northern Miss., 12/84 – 5/88
Case #36: *Vaughn v. USAA*, Northern Miss., 12/84 – 5/88

(3) Cases active after the Motion to Dismiss in *Tuck* of *4/15/86*:

Case #37: *Breland v. USAA*, Eastern Virg., 2/88 – 3/88
Case #39: *Saunders v. USAA*, Southern Miss., 9/85 – 2/88
Case #40: *Hoffman v. USAA*, Connecticut, 7/82 – 1/88
Case #42: *Holiday v. USAA*, Western Wash., 9/87 – 11/87
Case #46: *Aetna Casualty v. USAA*, E. Penn., 9/86 – 9/87
Case #47: *Markland v. USAA*, Northern Ind., 12/85 – 9/87
Case #49: *Bradley v. USAA*, Hawaii, 2/87 – 8/87
Case #51: *Cregor v. USAA*, Hawaii, N. Ill., 6/85 – 7/87
Case #53: *Woodside v. USAA*, Eastern La. 2/87 – 6/87
•Case #54: *Goldman v. USAA*, Northern Geo, 4/86 – 6/87
Case #55: *Behl v. USAA*, Middle Fla., 4/87 – 5/87
Case #58: *Moore v. USAA*, Southern Miss., 5/84 – 4/87
Case #59: *Elder v. USAA*, Eastern La., 12/85 – 2/87
Case #60: *Choate v. USAA*, Western Okla., 10/85 – 2/87
Case #61: *Oss v. USAA*, Western Texas, 1/85 – 2/87
Case #64: *Wunder v. USAA*, Southern Miss. 12/85 – 11/86

Case #66: *Horn v. USAA*, Nevada, 12/85 – 10/86
Case #68: *Dicesara v. USAA*, Eastern Virg., 5/86 – 7/86
Case #69: *Brooks v. USAA*, Western Okla., 4/86 – 7/86
Case #70: *Wheeler v. USAA*, Minnesota, 3/85 – 5/86
Case #73: *Ruth v. USAA*, Western Okla., 4/85 – 4/86

(4) Cases active after the *Neil* decision of *2/15/84*:

Case #75: *Wong v. USAA*, Rhode Island, 12/85 – 3/86
Case #76: *Oliney v. USAA*, Eastern La., 11/85 – 3/86
Case #77: *Stephens v. USAA*, Western Okla., 9/85 – 3/86
Case #78: *Brignon v. USAA*, Western Ark., 3/85 – 3/86
Case #79: *Healey v. USAA*, Connecticut, 9/85 – 2/86
Case #80: *Ondre v. USAA*, Middle Fla., 11/85 – 1/86
Case #83: *Conrad v. USAA*, Mid. Tenn., 11/85 – 12/85
Case #84: *Quinn v. USAA*, Vermont, 7/85 – 12/85
Case #87: *Boardman v. USAA*, South. Miss., 5/81 – 12/85
Case #89: *Oliney v. USAA*, Eastern La., 8/84 – 11/85
Case #90: *Holcomb v. USAA*, Northern Okla., 7/85 – 8/85
Case #91: *Webb v. USAA*, Eastern Virg., 6/85 – 8/85
Case #93: *Wolniewicz v. USAA*, East. La., 4/82 – 8/85
Case #95: *Grader v. USAA*, Kansas, 8/83 – 8/85
Case #99: *Carter v. USAA*, Eastern La., 12/83 – 2/85
Case #100: *King v. USAA*, New Jersey, 11/82 – 2/85
Case #101: *Lumbermen's v. USAA*, New Jersey, 8/84 – 1/85

Case #102: *Viboud Ruiloba v. USAA*, P.R., 9/83 – 12/84
Case #103: *Oliney v. USAA*, Eastern La., 9/82 – 12/84
Case #106: *Pauley v. USAA*, Southern Miss., 5/84 – 10/84
Case #110: *Isbell v. USAA*, Eastern La., 11/83 – 6/84
Case #111: *Hughes v. USAA*, Western Okla., 11/83 – 6/84
Case #112: *Horban v. USAA*, Western Okla., 8/83 – 6/84
Case #113: *Buchholz v. USAA*, Northern Miss., 8/83 – 6/84
Case #116: *Kiefer v. USAA*, Mid. La./S. Miss., 9/83 – 4/84
Case #118: *Janssen v. USAA*, Southern Miss., 5/83 – 2/84

(5) Cases active after the *Baer* decision of *6/27/74*:

Case #119: *Silverstein v. USAA*, West. Okla., 9/83 – 1/84
•Case #121: *Bituminous Fire v. USAA*, S. Ind., 5/83 – 1/84
Case #122: *Kahn v. USAA*, Eastern La., 4/81 – 1/84
Case #123: *Steinkamp v. USAA*, West. Okla., 11/83 – 12/83
Case #124: *McLand v. USAA*, Southern Miss., 8/82 – 12/83
Case #126: *Gomez v. USAA*, Eastern La., 11/84 – 10/83
Case #128: *Jolkovsky v. USAA*, Eastern La., 10/81 – 4/83
Case #130: *Shine v. USAA*, Southern Miss., 5/79 – 3/83
Case #131: *Traveres v. USAA*, Southern Calif., 8/82 – 2/83

Case #134: *Shine v. USAA*, Southern Miss., 3/79 – 9/82
Case #136: *Southern Home v. USAA*, S. Geo., 2/82 – 7/82
Case #140: *Hakkinen v. USAA*, Oregon, 10/81 – 1/82
Case #141: *Mullahy v. USAA*, Eastern La., 12/80 – 1/82
Case #142: *Smith v. USAA*, No. N.Y./Mid. La., 5/79 – 6/81
Case #144: *Shaddinger v. USAA*, East. La., 12/78 – 4/81
Case #145: *Felicino v. USAA*, Puerto Rico, '78 – 4/81
Case #146: *Johnson v. USAA*, Southern Texas, 10/80 – 3/81
Case #149: *Rhodes v. USAA*, Eastern La., 2/78 – 11/80
Case #150: *Byrd v. USAA*, Eastern La., 7/79 – 10/80
Case #151: *Gould v. USAA*, Eastern La., 9/79 – 6/80
Case #152: *Russell v. USAA*, Utah, 12/78 – 1/80
Case #154: *Villere v. USAA*, Eastern La., 3/79 – 11/79
Case #155: *Blair v. USAA*, Middle Penn., 1/79 – 10/79
Case #156: *Long v. USAA*, Eastern La., 5/77 – 9/79
Case #157: *Carolina Casualty v. USAA*, 1/78 – 7/79
Case #158: *Lumbermen's v. USAA*, South. Geo., 11/79 – 2/79
Case #162: *Baird v. USAA*, Southern Geo., 3/77 – 2/78
Case #163: *Williams v. USAA*, Southern Geo., 3/77 – 2/78
Case #166: *Baird v. USAA*, Southern Geo., 3/75 – 3/77
Case #167: *O'Keefe v. USAA*, Maryland, 6/75 – 5/77
Case #170: *O'Conner v. USAA*, Eastern La., 5/75 – 7/76

EXHIBIT "E"

LIST OF CASES FILED BY USAA IN STATE COURT AND REMOVED TO FEDERAL COURT BY THE DEFENDANT

(1) Cases active after the *Tuck* decision:

Case #14: *USAA v. Jelks*, East. N. Carolina, 10/88 – 3/89

(2) Cases active after the *Baer* decision:

Case #129: *USAA v. Allied Van*, Maryland, 7/81 – 4/83
Case #143: *USAA v. Univ. Carloading*, S.C. 6/80 – 4/81

EXHIBIT "F"

LIST OF CASES IN WHICH DIVERSITY ISSUE WAS RAISED

(1) Cases in which USAA was the party which had invoked federal jurisdiction:

Case #4: *Stout v. USAA*, Middle Louisiana, 9/88 – 1/90
Case #8: *Liles v. USAA*, Northern Miss., 11/86 – 11/89
Case #9: *Eason v. USAA*, Northern Geo., 3/89 – 6/89
Case #26: *USAA v. Weappa*, Northern Ala., 2/86 – 8/88
Case #48: *Bradley v. USAA*, Hawaii, 3/87 – 8/87
Case #72: *Pridgen v. USAA*, Middle Geo., 11/84 – 4/86

(2) Cases in which it was the party opposing USAA which had invoked federal jurisdiction:

Case #13: *Herrmann v. USAA*, Western Texas, 3/87 – 4/89
Case #14: *USAA v. Jelks*, Western Louisiana, 10/88 – 3/89
Case #16: *Dennis v. USAA*, Western Okla., 11/88 – 1/89
Case #17: *Lovelace v. USAA*, Western Okla., 7/88 – 1/89
Case #22: *O'Brien v. USAA*, Northern Geo., 5/88 – 10/88
Case #37: *Breland v. USAA*, Eastern Virg., 2/88 – 3/88
Case #42: *Holiday v. USAA*, Western Wash., 9/87 – 12/87
Case #68: *Dicesara v. USAA*, Eastern Virg., 5/86 – 7/86
Case #69: *Brooks v. USAA, Western Okla.*, 4/86 – 7/86
Case #73: *Ruth v. USAA*, Western Okla., 4/85 – 4/86
Case #84: *Quinn v. USAA*, Vermont, 7/85 – 12/85
Case #91: *Webb v. USAA*, Eastern Virg., 6/85 – 8/85
Case #131: *Travares v. USAA*, South. Calif., 8/82 – 2/83

(3) Cases in which it is unclear whether dismissal was based on USAA's status as an unincorporated association:

Case #56: *Behl v. USAA*, Middle Florida, 4/87 – 5/87
Case #83: *Conrad v. USAA*, Middle Tenn., 11/85 – 12/85
Case #101: *Lumbermen's Mutual v. USAA*, N.J., 8/84 – 1/85
Case #140: *Hakkinen v. USAA*, Oregon, 10/81 – 1/82

Case #170: *O'Conner v. USAA*, East. Louisiana, 5/75 – 7/76

EXHIBIT "G"

LIST OF JURISDICTIONS AFFECTED

(1) U.S. District Courts in which diversity cases involving USAA have been litigated:

(01) Northern District of Alabama
(02) District of Alaska
(03) Eastern District of Arkansas
(04) Western District of Arkansas
(05) Northern District of California
(06) Southern District of California
(07) District of Colorado
(08) District of Connecticut
(09) Middle District of Florida
(10) District of Kansas
(11) Western District of Kentucky
(12) District of Maryland
(13) District of Minnesota
(14) District of Mississippi
(15) Middle District of Georgia
(16) Northern District of Georgia
(17) Southern District of Georgia
(18) District of Hawaii
(19) Northern District of Illinois
(20) Southern District of Illinois
(21) Northern District of Indiana
(22) Southern District of Indiana
(23) Eastern District of Louisiana
(24) Middle District of Louisiana
(25) Western District of Louisiana
(26) District of Maryland

(27) Eastern District of Missouri
(28) Northern District of Mississippi
(29) Southern District of Mississippi
(30) District of Nevada
(31) District of New Jersey
(32) Eastern District of New York
(33) Northern District of New York
(34) Eastern District of North Carolina
(35) Northern District of Ohio
(36) Eastern District of Oklahoma
(37) Northern District of Oklahoma
(38) Western District of Oklahoma
(39) District of Oregon
(40) Eastern District of Pennsylvania
(41) Middle District of Pennsylvania
(42) Western District of Pennsylvania
(43) District of Puerto Rico
(44) District of Rhode Island
(45) District of South Carolina
(46) Middle District of Tennessee
(47) Southern District of Texas
(48) Western District of Texas
(49) District of Utah
(50) District of Vermont
(51) Eastern District of Virginia
(52) Western District of Virginia
(53) Eastern District of Washington
(54) Western District of Washington

(2) United States Courts of Appeals in which diversity cases involving USAA have been litigated:

(01) Third Circuit
(02) Fourth Circuit
(03) Fifth Circuit
(04) Sixth Circuit
(05) Ninth Circuit

EXHIBIT H

1ST CASE of Level 1 printed in FULL format.

GARY NEIL, Plaintiff V. UNITED SERVICE AUTOMOBILE ASSOCIATION, Defendant and Third-Party Plaintiff V. DEARBORN AUTO, INC., ET AL., Third-Party Defendants

Civil Action 83-2414-MA

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Slip Opinion
February 15, 1984

COUNSEL:

George F. gormley, [sic] esq., One Center Plaza, Boston, MA 02108, for Plaintiff

Gerald Blair, Avery, Dooley Post & Avery, 141 Tremont St., Boston, Ma. 02111, FOR DEARBORN AUTO, Philip J. McCarthy, Esq., LAW OFFICES OF PHILIP J. MC CARTHY, One Liberty Square Boston, Mass. 02109, FOR CREATIVE COACH WORKS, INC., John A. Maloney, Esq., LAW OFFICES OF LEONARD N. AUGELLO, 10 Post Office Square, Suite 1155, Boston, Mass. 02109, for Defendant

OPINION BY: MAZZONE

OPINION:

MEMORANDUM AND ORDER

MAZZONE, D.J.

Again, this matter is before the Court, this time on the defendant's motion to dismiss for lack of jurisdiction

over the subject matter. Fed.R.Civ.P. 12(b)(1). The factual background of the dispute is set out fully in my Memorandum and Order of September 30, 1983. The plaintiff, a citizen of Massachusetts, asserted jurisdiction founded on diversity of citizenship. 28 U.S.C. § 1332. In its present motion, the defendant claims that its legal status for purposes of establishing diversity of citizenship is that of an inter-insurance exchange association, and not a corporation. As such, the defendant claims its citizenship is determined by that of each of its members. There being a common citizenship between the plaintiff and thousands of the defendant's other members, the defendant moves this Court to dismiss for lack of jurisdiction.

The defendant is a reciprocal inter-insurance exchange. As cogently established by the Second Circuit in Baer v. United Services Automobile Association, 503 F.2d 393 (2d Cir. 1974), the defendant is an unincorporated association formed under Texas law and can not be considered a "corporation" for purposes of establishing diversity of citizenship. Citing Rosendale v. Phillips, 87 F.2d 454 (2d Cir. 1937) (per curiam), the Second Circuit noted: "For the purpose of determining whether diversity of citizenship exists, unincorporated associations have long been considered to be citizens of each and every state in which the association has members. Thus, if the unincorporated association party to a lawsuit has any member whose state citizenship coincides with the state citizenship of any of the opposing parties in the lawsuit, a federal district court has no diversity jurisdiction."

Slip Opinion

The Second Circuit also noted that under United Steelworkers v. R.H. Bouligny, Inc., 382 U.S. 145 (1965), the formal distinction between the insurance reciprocal and the insurance corporation is dispositive on the issue of whether the reciprocal should be considered a corporation for diversity purposes, irrespective of whether the distinction is, as a practical matter, an artificial or illogical one. 503 F.2d at 395. The Second Circuit further commented that any trend toward erosion of the rule creating multiple state citizenship for unincorporated associations seems to have been halted abruptly by Bouligny. The Supreme Court in Bouligny acknowledged the significant similarity between corporations and certain other types of associations, but was unwilling to tamper with the existing statutory rule of 28 U.S.C. § 1332(c), which by its express terms applies only to corporations: "We are of the view that these arguments, however appealing, are addressed to an inappropriate forum, and that pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to the Congress and not to the courts." 382 U.S. at 150-51.

In view of the clear pronouncement of the Supreme Court in Bouligny, and the Second Circuit's cogent application of the law to this particular defendant in Baer, this Court finds the defendant to be an unincorporated association for the purposes of establishing diversity of citizenship. I cannot be persuaded by the plaintiff's attempts to enlarge the scope of 28 U.S.C. § 1332(c) to consider the defendant a corporation for jurisdictional purposes.

There being no evidence to dispute the defendant's averment that it has thousands of members residing in Massachusetts, this Court must find that there is no diversity of citizenship between the plaintiff and the defendant. Accordingly, the complaint against the defendant must be dismissed.

In so doing, however, I must comment that it would behoove the defendant to act promptly and consistently in challenging diversity jurisdiction over it in Federal court actions. In the past, the defendant has both sued and allowed itself to be sued in Federal court where jurisdiction was founded on diversity of citizenship, without challenging jurisdiction as it does in this present motion. See Feliciano v. United Services Automobile Association, 646 F.2d 695 (1st Cir. 1981); United Services Automobile Association v. Glens Falls Insurance Company, 429 F.Supp. 101 (D.Conn. 1976); United Services Automobile Association v. Middleton, 77 F.R.D. 660 (N.D.Ga. 1978). Selective challenges to jurisdiction bespeak a self-serving abuse of the Federal court processes. Such tactics are particularly odious since subject matter jurisdiction is not a matter that can be created by laches, waiver or estoppel. See Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 377 n.21 (1978); Page v. Wright, 116 F.2d 449 (7th Cir. 1940). Had the defendant acted promptly in challenging jurisdiction, substantial expense and effort to the plaintiff, as well as to the third-party defendants, would have been avoided.

Finally, because the defendant/third-party plaintiff was not properly subject to this Court's jurisdiction, the defendant/third-party plaintiff's complaint must also be

dismissed as having been brought without this Court's jurisdiction. Fed.R.Civ.P. 14(a).

SO ORDERED.

ORDER OF DISMISSAL

MAZZONE, D.J.

In accordance with the Court's memorandum and order dated February 15, 1984 allowing the defendant's motion to dismiss, it is hereby ORDERED that the above entitled action and third party action be and hereby is dismissed.

EXHIBIT I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED SERVICES AUTOMOBILE ASSOCIATION P.O. Box 33490 San Antonio, Texas 78265, Plaintiff, vs. KENNETH E. BARGER, JR. 154 Trotter Road Bessemer, Pennsylvania 16112, Defendant.	CASE NO. C88-4001 JUDGE COMPLAINT JUDGE ALDRASH JURY DEMAND ENDORSED HEREON FILED Oct. 31, 1988

PARTIES AND NATURE OF THE ACTION

1. United Services Automobile Association ("USAA") is a corporation organized pursuant to the laws of the State of Texas with its principal place of business located in San Antonio, Texas.

2. USAA is engaged in the business of insurance and at all times material hereto was licensed to do business in the States of Ohio and Pennsylvania. USAA insured John Gary Burke under policy number 087 90 70-70U against injury or damage for which Mr. Burke became legally liable. The coverage applied to occurrences during the policy period of June 29, 1983 throughout June 29, 1984.

3. USAA is subrogated to the rights of John Gary Burke.

4. Kenneth E. Barger, Jr. ("Barger") is an individual residing at 154 Trotter Road, Bessemer, Pennsylvania.

5. This is an action brought pursuant to the Law of the State of Ohio seeking compensatory damages for loss suffered by USAA, as the subrogated insurer of John Gary Burke, proximately resulting from the negligence of Barger. USAA's Complaint is based on the principles of negligence, master-servant vicarious liability, and indemnity.

6. Jurisdiction of this Court is founded on Title 28, U.S.C. §§ 1332 and 2201, Plaintiff and Defendants not being citizens of the same state and the amount involved in this controversy, exclusive of interest and costs, exceeding the sum of $10,000.

COUNT I

7. Plaintiff repeats, as if fully set forth herein, the averments previously set forth in this Complaint.

8. On or about September 21, 1983, while employed at a building site in Hubbard, Trumbull County, Ohio, Barger negligently caused injury to William Miller, an individual.

9. On or about September 21, 1983, Barger was a joint employee of Truck World, Inc., an Ohio corporation and John Gary Burke, the President and owner of all of the issued and outstanding shares of Truck World, Inc.

10. As a result of the aforesaid negligence of Barger, William Miller instituted a lawsuit against John Gary Burke in the Court of Common Pleas of Trumbull County, Ohio.

11. John Gary Burke, through his insurance carrier, USAA, entered an appearance in the aforesaid lawsuit filed by William Miller.

EXHIBIT J

No. 88-1234

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

UNITED SERVICES AUTOMOBILE ASSOCIATION,
AN UNINCORPORATED ASSOCIATION,

Petitioner,

versus

LEROY TUCK, ADMINISTRATOR OF THE
ESTATE OF JOHNNY L. TUCK, DECEASED,
LEROY TUCK, AN INDIVIDUAL AND
DOROTHY TUCK, AN INDIVIDUAL,

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

LINDA G. ALEXANDER
– OF THE FIRM –
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COUNSEL OF RECORD FOR PETITIONER,
UNITED SERVICES AUTOMOBILE ASSOCIATION

PETITION FOR WRIT OF CERTIORARI

Petitioner and defendant/appellant below, United Services Automobile Association, an unincorporated association, respectfully petitions this Court for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit to review its decision in the appeal styled *Tuck v. United Services Automobile Association*, Docket Number 85-2770.

QUESTIONS PRESENTED FOR REVIEW

1. Whether, having determined that the trial court lacked jurisdiction of the subject matter of this action, the Tenth Circuit had power to remand this case to allow the district court to attempt to create subject matter jurisdiction retroactively.

2. Whether the Tenth Circuit had power to remand to consider imposition of sanctions when the court had no jurisdiction of the subject matter of the litigation in the first instance.

STATEMENT OF PARTIES TO THIS PROCEEDING

The caption contains the names of all actual parties to this action. Since imposition of sanctions is an issue, however, petitioner's former counsel of record, Mr. Dan Rogers, would have a potential interest in this matter. Further, plaintiffs below may be granted leave to amend to change the party defendant. Thus, petitioner cannot at present provide the Court with the names of additional individuals who might become parties to this litigation upon amendment.

* * *

While petitioner recognizes the power of every court to determine its own jurisdiction (and the apparent power of the courts to maintain the status quo while doing so, *United States v. United Mine Workers of America*, 330 U.S. 258 (1947)), once a lack of jurisdiction is found, the authority of the court ceases. "[I]f the command was in whole or in part beyond the power of the court, . . . so much as was in excess of jurisdiction . . . was void. . . . Such is the settled rule of decision in this Court." *Ex parte Rowland*, 104 U.S. 604, 612 (1881). *See also Ex parte Fisk*, 113 U.S. 713 (1885). The effect of the court's instructions on remand is precisely that: a command beyond the power of the court. After conclusively deciding the jurisdictional issue adversely to the Tucks, the Tenth Circuit mandates additional proceedings which are clearly outside both its appellate authority and the district court's power.

It is axiomatic that subject matter jurisdiction, where it does not otherwise exist, cannot retroactively be created, by amendment or otherwise. *Anderson v. Watt*, 138 U.S. 694 (1891).

Here the appellate court's remand instructions brazenly go much further than directing the amendment of the plaintiffs' jurisdictional allegations. *See* 28 U.S.C. § 1653 (1982). They direct the district court and the Tucks to change the very substance of the action by completely changing the parties, if possible. The mandate exceeds the federal court's jurisdictional bounds and is an illegitimate exercise of power. It is just such usurpations of power which fall within the supervisory power of this Court. This Court should wield that supervisory power to review those actions by writ of certiorari.

* * *

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEROY TUCK, Administrator of the Estate of JOHNNY L. TUCK, Deceased; LEROY TUCK, an individual and DOROTHY TUCK, an individual,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-175-C
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

COMBINED OBJECTION TO MAGISTRATE'S RULING AND SUPPORTING MEMORANDUM BRIEF

(Filed Jan. 20, 1989)

Pursuant to Fed.R.Civ.P. 72(a), Defendant United Services Automobile Association objects to the Magistrate's Order of January 12, 1989, granting plaintiffs leave to conduct discovery in support of their quest for sanctions against USAA. For the reasons set forth in the following Memorandum Brief, included pursuant to Local Rule 14, USAA requests that the Magistrate's Order be reviewed and set aside by the assigned district judge.

SUPPORTING MEMORANDUM BRIEF

I. Summary of Proceedings Giving Rise to the Magistrate's Ruling

On October 14, 1989, the Tenth Circuit entered its Opinion expressly finding that, "as [this] case now

stands, there is not complete diversity among the parties and subject matter jurisdiction is lacking." *Tuck v. United Services Automobile Association*, 859 F.2d 842, 845 (10th Cir. 1988). Although federal jurisprudence clearly requires dismissal upon such a determination, the Tenth Circuit instead remanded the matter with instructions for further proceedings. The Tenth Circuit's instructions were specific: First, the court is to determine whether jurisdiction can be retroactively created without prejudice to USAA. Only in the event that is not possible, forcing dismissal of the action, *then* the court is to consider the need for sancions [sic]. The mandate issued on November 18, 1988.

At the time of the court-order status conference on January 12, 1989, (nearly two months after the issuance of the mandate), the plaintiff had made no attempt whatsoever to amend his pleadings to invoke this court's jurisdiction. As the case currently stands, the court is *still* without any jurisdiction to proceed. Accordingly, defendant filed a motion to dismiss for lack of jurisdiction. At the status conference, the plaintiff sought leave of court to conduct discovery in preparation for a hearing on sanctions. Over the objection of defendant, the magistrate permitted the plaintiff to serve one set of interrogatories to begin to prepare his case for sanctions.

II. Arguments and Authorities Supporting Review and Vacation of the Magistrate's Order

A.

THE MAGISTRATE'S ORDER ALLOWING DISCOVERY FAILS TO FOLLOW THE TENTH CIRCUIT'S MANDATE.

Without addressing the Tenth Circuit's illegitimate exercise of power (which has been addressed to the

United States Supreme Court in USAA's currently-pending Petition for Writ of Certiorari), USAA submits that the Magistrate's discovery Order goes beyond the Tenth Circuit's instructions on remand. It is, simply put, a case of putting the cart before the horse. The

* * *

EXHIBIT L

No. 83-C-175C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEROY TUCK, et al.,

Plaintiffs,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION, et al.

Defendants.

PLAINTIFFS' BRIEF IN SUPPORT OF
PLAINTIFFS' MOTION TO ENJOIN

Patrick E. Carr #1506

CARR & CARR ATTORNEYS
4520 W. Harvard, Suite 135
Tulsa, Oklahoma 74135
(918) 747-7207

COUNSEL FOR PLAINTIFFS

February 2, 1990

PROPOSITION II

THE DEFENDANT, USAA, HAS ENGAGED IN A SYSTEMATIC MANIPULATION OF THE FEDERAL COURT SYSTEM, CULMINATING IN ITS OUTRAGEOUS MISCONDUCT IN THE CASE. USAA SHOULD BE ENJOINED FROM FURTHER PARTICIPATION IN DIVERSITY LITIGATION IN FEDERAL COURT.

A. USAA continues to participate in cases on appeal in spite of its Motion to dismiss on appeal in Tuck.

The United States Court of Appeals for the Tenth Circuit made it perfectly clear that USAA was, one, to file motions to dismiss in all pending diversity litigation and, two, not to appear before it again "under similar circumstances." Not only has USAA flagrantly defied the Tenth Circuit by remaining in, and even initiating, diversity cases after that decision, it has, incredibly, appeared at least three times thereafter before a Court of Appeals in sister circuits under exactly the same circumstances, only in these cases USAA has not sought to dismiss the case for lack of subject matter jurisdiction because USAA would stand to lose if it did so. See Addendum: Exhibit "A" – Part I.

The decision of the Tenth Circuit was handed down on October 14, 1988. On October 31, 1988, only two weeks later, USAA filed a Complaint in the Northern District of Ohio claiming to be a Texas corporation. *USAA v. Barger*, Addendum: Exhibit "A" – Case #3. On March 23, 1989, USAA filed its Motion for Summary Judgment in *Barger*, only two weeks after filing its Reply Brief in Support of

* * *

Second only to these removal cases are those in which USAA is the plaintiff. While not divesting a state court of its legitimate jurisdiction, such cases do involve a fraud on the federal court whose jurisdiction is erroneously invoked. Moreover, an action for declaratory judgment commonly seeks to avoid a duty to defend or indemnify in a state court suit, and may even involve a stay of the state court proceedings. USAA has been the plaintiff in at least 41 cases since the *Baer* decision. Of these, 17, almost half, were filed, or remained opened, after USAA filed its Motion to Dismiss in *Tuck*, ten after its own Claims Department Bulletin, and four were still active after the Tenth Circuit's instruction to USAA to withdraw from all diversity cases. See Addendum: Exhibit "C."

One, *USAA v. Arey*, Addendum: Exhibit "A" – Case #1, which was filed in the Western District of Virginia on July 31, 1989, more than nine months after the *Tuck* decision, seeks a declaratory judgment that no coverage exists under a liability policy in a wrongful death case. Paragraph one of the Complaint falsely alleges that USAA is "a citizen of Texas by virtue of its being incorporated under Texas law and by virtue of having its principal place of business in Texas." This case is still pending.

USAA filed a Motion to Intervene in another case, *Pacific Int'l Services Corp. v. Kaji*, Addendum: Exhibit "A" – Case #5, on March 24, 1989, which was granted on June 5, 1989. The following day USAA filed its own counterclaim. This case, too, remains pending. The

* * *

EXHIBIT M

DION & ROSENAU
BY: BRUCE S. PANCIO, ESQUIRE
IDENTIFICATION NO. 46467 ATTORNEY FOR Plaintiff
SUITE 2010
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PHILADELPHIA, PA 19102
(215) 561-7000

UNITED SERVICES AUTOMOBILE ASSOCIATION vs. ANTHONY EVANGELISTA, Administrator of the Estate of VINCENT EVANGELISTA	IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA (Filed Dec. 4, 1987) *No.* 87-7793

COMPLAINT FOR DECLARATORY JUDGMENT

1. This action is filed under the Federal Declaratory Judgment Act, 28 U.S.C. Section 2201.

2. The plaintiff, United Services Automobile Association (USAA), is incorporated under the laws of the State of Texas, with its principal place of business in San Antonio, Texas. At all times relevant hereto, USAA was licensed to engage in the business of selling and servicing motorcycle insurance policies in the Commonwealth of Pennsylvania.

3. The defendant, Anthony Evangelista, is the administrator of the Estate of Vincent Evangelista, and is an

individual residing at 484 S. Poplar Street, Hazelton, Pennsylvania 18201.

4. The matter in controversy exceeds the sum of $10,000.00, exclusive of interest, costs and attorney's fees. The Court has jurisdiction by virtue of 28 U.S.C., Section 1332.

5. An actual controversy of justicible [sic] nature exists between the plaintiff and defendant, who are citizens of different States, involving rights and liabilities under a contract of insurance, and is dependent upon the construction of said contract of insurance, which controversy may be determined by a judgment in this matter, without other suits.

6. On or about September 2, 1984, Vincent Evangelista was involved in a motor vehicle accident on Interstate 81 in Hanover Township, Luzerne County, Pennsylvania, in which he sustained fatal personal injuries.

7. It was alleged that this accident occurred when an unknown vehicle made a sudden lane change and forced Chris Evangelista to lose control of his vehicle in which Vincent was a passenger.

8. At the time of the accident, Chris Evangelista's vehicle was insured with State Farm Mutual Automobile Insurance Company, and State Farm paid the Estate of Vincent Evangelista $25,000.00 in uninsured motorist benefits.

9. This $25,000.00 payment from State Farm represented its policy limits.

10. At the time of the accident, Vincent Evangelista owned a vehicle that was insured with Erie Insurance Company.

11. As a result of the accident, Erie paid the Estate of Vincent Evangelista $50,000.00 in uninsured motorist benefits.

12. This $50,000.00 payment from Erie represented its policy limits.

13. At the time of the accident, Vincent Evangelista was residing with his father Anthony Evangelista.

14. Anthony Evangelista was the owner of a vehicle that was insured with Erie

* * *

insurance issued to Mark Evangelista.

28. The defendant has been fully compensated as he has failed to exhaust the previous insurance policies.

WHEREFORE, plaintiff, United Services Automobile Association, requests that this Court enter declaratory judgment construing the policy of insurance attached as Exhibit A, and determining the respective rights and liabilities of the plaintiff and defendant thereunder and under the circumstances of the aforementioned incident and that defendant be permanently enjoined from seeking uninsured motorist benefits under said policy.

DION & ROSENAU

BY: Bruce S. Pancio
BRUCE S. PANCIO, ESQUIRE

VERIFICATION

I verify that the statements made in the foregoing COMPLAINT FOR DECLARATORY JUDGMENT are true and correct. I understand that false statements here made are subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsifications to authorities.

/s/ Bruce S. Pancio
BRUCE S. PANCIO, ESQUIRE

Dated: November 23, 1987

EXHIBIT N-1

CONKLIN, SCHNEIDER & LOVE
A LAW CORPORATION

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Texas corporation, Plaintiff, vs. HAWAIIAN INSURANCE AND GUARANTY COMPANY, LTD., a Hawaii corporation, THE TRAVELERS INSURANCE COMPANIES, a Connecticut corporation, ROBERT THOMAS GARRITY, ROBERT EMMETT GARRITY, MRS. ROBERT EMMETT GARRITY, LAWRENCE VINCENT DOWNES, CORNELIUS D. DOWNES, MRS. CORNELIUS D. DOWNES, JOHN WILLIAM BERTRAND, DREW BERTRAND, MRS. DREW BERTRAND, ELTON BUNG KUM MOW, GEORGE K. B. MOW, and MRS. GEORGE K. B. MOW, Defendants.	CIVIL NO. 84-0300 COMPLAINT; EXHIBITS A and B; SUMMONS (Filed Apr. 3, 1984)

COMPLAINT

1. Plaintiff files this Complaint under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

2. Plaintiff is a corporate citizen of Texas, incorporated in and having its principal place of business in the State of Texas.

3. Defendant Hawaiian Insurance and Guaranty Co., Ltd. ("HIG") is a corporate citizen of Hawaii, incorporated in and having its principal place or places of business in states other than the State of Texas.

4. Defendant The Travelers Insurance Companies ("Travelers") is a corporate citizen of Connecticut, incorporated in and having its principal place or places of business in states other than the State of Texas.

5. Defendants Robert Thomas Garrity, Mr. and Mrs. Robert Emmett Garrity, Lawrence Vincent Downes, Mr. and Mrs. Cornelius D. Downes, John William Bertrand, Mr. & Mrs. Drew Bertrand, Elton Bung Kum Mow, Mr. & Mrs. George K. B. Mow are citizens of Hawaii.

6. An actual controversy of a justiciable nature exists between Plaintiff and Defendants involving their respective rights and liabilities under various liability insurance policies which is dependent on the construction of said policies and which may be determined by a judgment of this court without other suits.

7. The matter in controversy exceeds $10,000, exclusive of interest and costs.

8. This court has jurisdiction because of diversity of citizenship of the parties.

* * *

EXHIBIT N-2

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Attorneys for

UNITED SERVICES AUTOMOBILE ASSOCIATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TRANSAMERICA INSURANCE GROUP, Plaintiff, v. HAWAIIAN INSURANCE AND GUARANTY COMPANY, LTD.; et al., Defendants.	CIVIL NO. 87-0483-ACK UNITED SERVICES AUTOMOBILE ASSOCIATION'S SCHEDULING CONFERENCE STATEMENT (Filed Oct. 6, 1987)
UNITED SERVICES AUTOMOBILE ASSOCIATION, etc., Plaintiff, v. HAWAIIAN INSURANCE AND GUARANTY COMPANY, LTD., etc., et al., Defendnats. [sic]	CIVIL NO. 84-0300

UNITED SERVICES AUTOMOBILE ASSOCIATION'S SCHEDULING CONFERENCE STATEMENT

UNITED SERVICES AUTOMOBILE ASSOCIATION (USAA), Defendant in Civil No. 87-0483-ACK, hereby submits the following as its Scheduling Conference Statement as required by Local Rule 235-3(b) and the Order filed by this Court on June 19, 1987:

1. Service of Process

USAA has been served.

2. JURISDICTION AND VENUE

There is no dispute as to jurisdiction or venue.

3. ANTICIPATED MOTIONS

USAA will file a Motion for Summary Judgment in Civil No. 84-0300. This Motion for Summary Judgment will consolidate the rulings of the Court in Civil No. 84-0300 on three separate motions for partial summary judgment, which fix the rights and obligations of the parties in Civil No. 84-0300 under the terms of certain insurance policies.

Other motions may be filed as discovery progresses.

4. JOINDER OF PARTIES; AMENDMENTS

Amendments, if any, will be filed as discovery progresses.

5. ANTICIPATED OR REMAINING DISCOVERY

No discovery has yet been conducted by USAA in this action. Substantial discovery has been taken in Civil

No. 84-0300. USAA will conduct such discovery as may be necessary

* * *

EXHIBIT N-3

SCHNEIDER, LOVE & YAMAMOTO
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Tel. No. 531-1384

Attorneys for UNITED SERVICES AUTOMOBILE ASSOCIATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED SERVICES AUTOMOBILE ASSOCIATION, etc.,	) CIVIL NO. 84-0300
Plaintiff,	) PRE-TRIAL STATEMENT OF UNITED SERVICES
vs.	) AUTOMOBILE
HAWAIIAN INSURANCE AND GUARANTY COMPANY, LTD. etc., et al.,	) ASSOCIATION and CERTIFICATE OF SERVICE
Defendants.	) (Filed Mar. 2, 1988)
TRANSAMERICA INSURANCE GROUP,	) CIVIL NO. 87-0483-ACK
Plaintiff,	

vs.

HAWAIIAN INSURANCE AND GUARANTY COMPANY, LTD.; et al.,

Defendants.

PRETRIAL STATEMENT OF UNITED SERVICES AUTOMOBILE ASSOCIATION

UNITED SERVICES AUTOMOBILE ASSOCIATION ("USAA") pursuant to rule 235-7, Rules of the United States District Court for the District of Hawaii, hereby submits the following Pretrial Statement.

A. PARTY

This Pretrial Statement is submitted on behalf of United Services Automobile Association ("USAA"), Defendant in Civil No. 87-0483-ACK and Plaintiff in Civil No. 84-0300. USAA is a corporate citizen of Texas, incorporated in and having its principal place of business in the State of Texas.

B. JURISDICTION AND VENUE

This Court has jurisdiction based on the Federal Declaratory Judgment Act, 28 U.S.C. § 2202, and based on the diversity of citizenship of the parties. The matter in controversy, exclusive of interest and cost, exceeds the sum of $10,000. Jurisdiction and venue appear to be undisputed.

C. SUBSTANCE OF ACTION

Civil No. 84-0300, involves an insurance coverage dispute among three liability insurers: (1) Plaintiff USAA;

(2) Defendant, Hawaiian Insurance and Guaranty Co., Ltd. ("HIG"); and (3) Defendant, The Travelers Insurance Companies ("Travelers").

* * *

EXHIBIT O-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Texas corporation PLAINTIFF v. BARBARA WEAPPA, JULIE KRESS, REBECCA DAVIDSON and JEFFREY DAVIDSON DEFENDANTS	CIVIL ACTION NO. CVS6AR5072NW

COMPLAINT

(Filed Feb. 10, 1988)

1. The plaintiff, United Services Automobile Association (hereinafter referred to as USAA) is an insurance association incorporated under the laws of the State of Texas and having its principal place of business in San Antonio, Texas. The defendant Barbara Weappa is a resident citizen of the State of Alabama residing in Florence, Alabama. The defendant Julie Kress is a resident citizen

of the State of Tennessee residing in Loretto, Tennessee. The defendants Rebecca Davidson and Jeffrey Davidson are resident citizens of the State of Alabama residing in Florence, Alabama. Jurisdiction of this action in the United States District Court for the Northern District of Alabama is founded upon diversity of citizenship under the provisions of 28 USC 1332, 1441. The amount in controversy as to each claim between the parties exceeds the sum of $10,000.00 and costs.

2. On September 13, 1985, USAA had in force and effect a policy of automobile liability insurance which covered the defendant Barbara Weappa against claims made against her and

* * *

EXHIBIT O-2

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Plaintiff	)	CIVIL ACTION NUMBER 86-AR-5072-NW
v.	)	
BARBARA WEAPPA, et al	)	
Defendants	)	

PRE-TRIAL ORDER

(Filed Aug. 5, 1986)

A pre-trial conference was held in the above case on August 5, 1986, wherein, or as a result of which, the following proceedings were held and action taken:

1. Appearances. Appearing at the conference were:

Plaintiff: Robert E. Jones, III

Defendant Weappa: Wilson Mitchell

Defendant Kress: [Illegible]

Defendants Davidson: Frank Potts

2. Jurisdiction and venue. Subject matter jurisdiction exists under 28 USC 1332 by reason of the amounts in controversy and the admitted diversity of citizenship. Personal jurisdiction and venue are not contested.

3. Parties and trial counsel. Any fictitious defendants are deleted; the parties before the court are

* * *

EXHIBIT P-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA,
ALBANY-AMERICUS DIVISION

HENRY A. PRIDGEN, As Next Friend for HENRY A. PRIDGEN, III, A Minor,	:	NO: 84-247-ALB-AMER
Plaintiff,	:	
vs.	:	
UNITED SERVICES AUTOMOBILE ASSOCIATION,	:	
Defendant.	:	

PETITION OF DEFENDANT FOR REMOVAL

Comes now petitioner, UNITED SERVICES AUTOMOBILE ASSOCIATION, and files this their petition for removal pursuant to 28 U.S.C.A. § 1441, et seq., and respectfully shows this Court:

1.

On October 24, 1984, a civil action was filed against petitioners in the Crisp County Superior Court, to-wit: HENRY A. PRIDGEN, As Next Friend for HENRY A. PRIDGEN, III, A Minor, Plaintiff vs. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant, Civil Action No. 84-V-431. Copies of the complaint, Request For Admissions, First Interrogatories and Requests For Production Of Documents of Defendant and Summons are attached hereto.

2.

The foregoing civil action was served on Petitioners on

* * *

STATE OF GEORGIA,
COUNTY OF DOUGHERTY.

VERIFICATION

Personally appeared before the undersigned, an officer duly authorized to administer oaths in said State and County, Hilliard P. Burt, who, as counsel for petitioner, on oath, states that the foregoing statements are true and correct to the best of his knowledge and belief.

Sworn to and subscribed
before me this the 12th
day of November, 1984.

/s/ Hilliard P. Burt
HILLIARD P. BURT,
Attorney

/s/ Mary Kathryn Williams
NOTARY PUBLIC

My Commission Expires: 11-12-85

EXHIBIT P-2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA,
ALBANY-AMERICUS DIVISION

HENRY A. PRIDGEN, As Next Friend for HENRY A. PRIDGEN, III, A Minor,	:	NO. 84-247-ALB-AMER
Plaintiff	:	
VS.		
UNITED SERVICES AUTOMOBILE ASSOCIATION,	:	
Defendant	:	

MOTION TO REMAND

Plaintiff, Henry A. Pridgen, as next friend for Henry A. Pridgen, III, a minor, by his undersigned Attorney, hereby moves this Court for an order remanding the above entitled action to the Superior Court of Crisp County, State of Georgia, from whence it was removed to this Court, on the ground that at the time of the filing of defendant's petition for removal of the action to this Court, both plaintiff and defendant were citizens of the State of Georgia. This Court is therefore without original and removal jurisdiction over the above entitled action.

Plaintiff further moves the Court for an Order directing defendant to pay all of plaintiff's costs and disbursements incurred by reason of defendant's wrongful removal of the above entitled action to this Court.

DATED this, 19th day of November, 1984.

DAVIS, PRIDGEN and JONES

By: /s/ John C. Pridgen
John C. Pridgen
Attorneys for Plaintiff

P.O. Box 397

Vienna, Georgia 31092

* * *

Defendant subsequently filed its petition in this Court for removal alleging diversity jurisdiction under 28 U.S.C. § 13 [sic]

PART II

ARGUMENT AND CITATION OF AUTHORITY

In order to determine diversity jurisdiction it must first be determined whether defendant is a corporation or an unincorporated association.

As stated in an affidavit filed by defendant in *Baer vs. United Services Automobile Association*, 503 F.2d 393, 394 (2d Cir. 1974),

> "United Services Automobile Association is not the average insurance company. It is indeed not a corporation, but 'an inter-insurance exchange'. . . . It insures only servicemen, ex-servicemen, and their immediate families. It sometimes refers to its insureds as 'members'. . . . It attempts, to an extent, to treat its insureds as partners in an Enterprise, rather than to deal with them on a strictly adversary basis."

In the insurance policy which is the subject matter of the instant law suit, defendant, United Services Automobile Association (hereinafter referred to "USAA") maintains this self-appraisal by referring to itself only as "a reciprocal inter-insurance exchange". (A copy of the subject insurance policy is attached as Exhibit "A").

If USAA is an unincorporated association formed under Texas law and engaged in the issuance of insurance, it cannot be considered a corporation for purposes of establishing diversity of citizenship. *Baer vs. USAA*, supra. Further, for purposes of determining whether diversity jurisdiction exists, unincorporated associations will be considered to be citizens of each and every state in which the association has members. *Arbuthnot vs. State Automobile Insurance Association*, 264 F.2d 260 (10th Cir. 1959). It is inconceivable that USAA has no other members who are citizens of the State of Georgia other than plaintiff.

It should also be noted that the petition for removal filed by USAA does not allege that USAA is a corporation. It neither alleges USAA's state of incorporation or its principal place of business but rather states "petitioners are residents and citizens of the State of Texas".

Assuming arguendo that USAA is a corporation diversity jurisdiction would still be lacking because of the proviso in 28 U.S.C. § 1332(c), which states

> "That in any direct action against the insurer of a policy or contract of liability insurance, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the state of which the insured is a citizen, as well as any state by which the insurer has

been incorporated and the state where it has its principal place of business."

This proviso to 28 U.S.C.§ 1332(c) was added by the Congress in 1964 and the immediate purpose of the 1964 amendment was made clear in the legislative history. Wisconsin and Louisiana had enacted direct action laws permitting a person injured by another who was covered by liability insurance to sue the liability carrier rather than the alleged tort feasor. Thus even where the plaintiff and the alleged tort feasor were residents of the same state, if the liability carrier was a citizen of a different state, diversity jurisdiction could be asserted by the liability carrier. This resulted in a flood of essentially local law suits in the already crowded district court dockets.

Following the 1964 amendment to § 1332(c) many states including Georgia, passed no-fault insurance. (Ga. L. 1974, p. 113). No-fault insurance in many respects replaced traditional tort liability by enabling an injured party to

* * *

EXHIBIT P-3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA,
ALBANY-AMERICUS DIVISION

HENRY A. PRIDGEN, As Next Friend for HENRY A. PRIDGEN, III, A Minor, Plaintiff	CIVIL ACTION NO. 84-247-ALB-AMER
vs.	DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND
UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant	

I.

FACTUAL BACKGROUND

U.S.A.A., Defendant in the above action, is a reciprocal interinsurance exchange, domiciled in the State of Texas, and licensed under Chapter 19 of the Texas Insurance Code. U.S.A.A. is licensed to do business as a property/casualty insurer in all fifty states, as well as certain foreign locations, and has over 1.2 million policyholders. (Affidavit of John L. Swyers.)

U.S.A.A. is managed by a Board of Directors, elected by the policyholders at an annual meeting. Operational management is by a President, who is also the Attorney-in-Fact, and several Vice Presidents. The Association's headquarters are located in San Antonio, Texas in its own building which houses approximately 5,800 employees. Approximately 800 employees are located in field service offices in several other states.

U.S.A.A. is the parent company in an insurance holding company system regulated under Article 21.49-1 of the Texas Insurance Code. US.A.A. owns all the stock of several subsidiary Texas insurance and financial service corporations.

Upon being served by Plaintiff in Crisp County Superior Court for alleged failure to timely pay $47,500.00 in Personal Injury Protection benefits, U.S.A.A. removed this action to this Court pursuant to 28 U.S.C. § 1332. Plaintiff has filed his Motion to Remand.

II.

ARGUMENT AND CITATION OF AUTHORITY

(A)

For purpose of 28 U.S.C. § 1332, U.S.A.A. should be considered a citizen of Texas.

The U.S. Supreme Court in *Puerto Rico v. Russell & Co.*, 28 U.S. 476, 77 L.Ed. 903 (1933) the Court held in determining whether diversity of citizenship exists so as to give a Federal Court jurisdiction of a suit against a sociedad en commondita organized under Puerto Rican Commercial Code, the citizenship of its members is immaterial.

The Court said:

> granting the preliminary injunction, abides the hearing.
>
> Perhaps the most recent case in which the question has been determined is in *Van Sant v. American Express Co.*, 3 Cir., 169 F.3d 355, 372, where a New York joint stock association was

> treated as a corporation for purposes of diversity and, hence, as a citizen of New York. In its opinion, the court observed (in a foot-note) that the old rule 'that generally speaking an unincorpoarted [sic] association has no citizenship for diversity purposes is itself beginning to show signs of being outmoded.' "
>
> However, the rule that the citizenship of unincorporated associations generally is that of its members, seems to be losing its vitality. 'There is some evidence . . . that the present federal rule is undergoing change, for the Supreme Court has treated a sociedad en comandita organized under Puerto Rico law as a citizen and resident of Puerto Rico for purposes of federal jurisdiction.' *Moore's Federal Practice*, Volume 3, page 1413 (2d Edition). In the case above referred to, *People of Puerto Rico v. Russell & Co.*, 288 U.S. 476, 53 S.Ct. 447, 448, 77 L. Ed. 903, the court held that a sociedad en comandita under the laws of Puerto Rico was not a limited partnership in the common-law sense, but a juridical person, with a personality like that of a corporation, and that it had the status of a corporation for purposes of federal jurisdiction, that is, citizenship."

The citizenship of a business trust is determined by the citizenship of the trustees, rather than that of the individual beneficiaries. *Navarro Savings Assoc. v. Lee*, ___ U.S. 458 (1980).

U.S.A.A. is a "reciprocal inter-insurance exchange" organized under the laws of the State of Texas. Under Texas Law, such exchanges are similar, if not identical to, corporations. In Wilson v. Marshall, 218 S.W. 2d 345, 346,

(1949) the Court of Civil Appeals of Texas described them as follows:

> "The subscribers at a reciprocal exchange are not only policyholders therat and as such entitled to the protection afforded by the policies and required to pay the premiums stipulated in the policies; but they also own the insurance business just as stockholders own their corporation. They are the owners of their insurance exchange, and as such are entitled to reap the profits accruing from the operation of their insurance business and are also required to pay their pro rata part of the losses and expenses incurred at the exchange. It is their liability to pay their pro rata part of the losses and expenses that take the place of the capital structure of the exchange. When called upon to pay an assessment for his pro rata part of the losses, the subscriber at the exchange stands in the position of a stockholder in a stock insurance company whose capital structure has become depleted and who is required to pay a certain amount on each share of stock he owns into the coffers of the company to remove the deficit."

Additionally, indicia of the defendant's corporate status may be found in the fact that U.S.A.A. is the parent company in an insurance holding company system regulated under Article 21.49-1 of the Texas Insurance Code. U.S.A.A. owns all the stock of several subsidiary Texas insurance and financial service corporations. Also, like a corporation, U.S.A.A. is controlled by a Board of Directors, has officers, and is governed by a set of By-laws.

An examination of the Texas statutes pertaining to reciprocal inter-insurance exchanges indicates that such

exchanges may be corporations. In fact, such an examination reveals that the term "reciprocal exchange" is less a description of the type of business organization than it is a description of the type of insurance arrangement. See Article 19.01 of the Texas Code of Insurance, a copy of which is attached to Mr. Swyers' affidavit.

Moreover, reciprocal insurance exchanges are subject virtually to the same regulatory scheme as corporations. See Article 19 of the Texas Insurance Code.

Additionally, United Services Automobile Association, has registered as a member of a holding company system under the Article 21.49-1 of the Texas Insurance Code, a statute generally regarded as governing corporate activity. See *Lebowitz L.J. Corporations,* 26 Southwest Law Journal 87, 90, wherein said statute is discussed under the annual survey of corporate law. U.S.A.A.'s position in the holding system is as the parent or holding company, not simply as a small subsidiary, in the United Services Automobile Association group. Because U.S.A.A. is the parent company of a number of subsidiary corporations, and because, regardless of which subsidiary one is in fact dealing with, all communications are directed to the same corporate headquarters in San Antonio, Texas, one can conclude that the parent and the subsidiaries are really one and the same and should be treated as one corporation.

Clearly, U.S.A.A. is a corporate entity in everything but name. For this reason, Defendant urges this Court to treat it as such for purposes of determining its citizenship, as the Supreme Court did in *Puerto Rico vs. Russell & Company,* 288 U.S. 476 (1933). In that case the Court held

that because a "sociedad decomandita" so closely resembled a corporation it should be treated as one for purposes of determining its citizenship. In so finding, the Court held that because the "sociedad" is treated as a "judicial person" under the laws of Puerto Rico, "we saw no adequate reason in holding that the sociedad has a different status for purposes of federal jurisdiction than a corporation organized under that law." So too, because U.S.A.A. appears to act and be treated as a "person distinct from its members", under the law of Texas, it should not be treated here any differently than a Texas corporation.

Plaintiff has relied in its Brief upon *Baer vs. United Services Automobile Association*, 503 F. 2d 393 (2d Cir. 1974), in which the Courtof [sic] Appeals for the Second Circuit find sua sporte, the parties were unable to bring most of the facts relied upon herein to the Court's attention. The decision appears to rest exclusively upon the Court's reading of Articles 2 and 19 of the Texas Insurance Code, and the fact that U.S.A.A. restricts the availability of its insurance to servicemen. The court apparently relied upon no Texas case law to reach its conclusion that a reciprocal exchange is not similar to a corporation. As mentioned above, *Wilson*, supra, holds that the two are almost identical. Nor did the Court consider U.S.A.A's status as a holding company, under Article 21.49-1 of the Texas Insurance Code. Lastly, *Baer* was decided in 1974, and, while it may have been a smaller operation then, which more closely resembled a voluntary association, today it is clearly a huge corporate organization.

In *United Services Automobile Association vs. Glens Falls Insurance Company*, 429 F. Supp. 101, 105 (D. Conn. 1976) the Court described United Services Automobile Association as a "Texas corporation", and found diversity jurisdiction on that basis. That was a case in the Second Circuit decided two years after the *Baer* decision.

It is interesting to note that:

> "Business entities that are not incorporated pursuant to state law may qualify for treatment as corporations for federal tax purposes. These organizations, called associations, must have more corporate characteristics than partnership or trust characteristics. The Treasury Regulations identify certain characteristics that establish 'corporateness' against which unincorporated business entities are measured. If the organization has more corporate characteristics than not, it will be identified as a corporation. These characteristics are: '(i) Associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests.'" *3A Cavitch, Business Organizations*, § 64.02 (3).

Under 28 U.S.C. 1332, a corporation is a citizen of both the place of its incorporation and its principal place of business. United Services Automobile Association is, therefore, a citizen of Texas since it was organized under Texas law, and as a holding company, its principal place of business is considered to be the location of its "nerve center", i.e. "the location from which the corporation's officers direct, control, and coordinate all activities without regard to location, in the furtherance of the corporate

objective" *Lugo Vina vs. Pueblo Intern Insurance*, 574 F. 2d 41, 43, (1st Cir. 1979). Since all officers operate out of San Antonio, Texas, that is the "nerve center" and principal place of business of United Services Automobile Association.

For the foregoing reasons, the Defendant respectfully urges this Court to deny the Plaintiff's Motion to Remand.

(B)

Plaintiff contends this is a "direct" action against an insurance company and therefore is not removable pursuant to a proviso added to 28 U.S.C. § 1332: "Any direct action against the insurer of a policy or contract of liability insurance . . . such insuror [sic] shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insuror [sic] has been incorporated and of the State where it has its principal place of business."

It is basic hornbook law that removal jurisdiction is keyed to original diversity jurisdiction under 28 U.S.C. § 1332. "As under the predecessor statute, removal under section 1441 is keyed generally to original jurisdiction of the district of courts." 7B J. Moore, *Moore's Federal Practice*, at page J.C.-699.

Georgia's no-fault law is not a direct action statute. A

* * *

EXHIBIT Q

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LUZ STOUT AND LLOYD STOUT INDIVIDUALLY, AND AS THE NATURE ADMINISTRATORS OF THE ESTATE OF THEIR MINOR CHILD, ANGIE STOUT	CIVIL ACTION
VERSUS	NO: 88-800
LINDA CLAING HAMBY AND UNITED SERVICES AUTOMOBILE ASSOCIATION	SEC. A

PETITIONER FOR REMOVAL
(Filed Sept. 22, 1988)

NOW INTO COURT, through undersigned counsel, comes United Services Automobile Association, defendant in the above entitled and numbered proceeding, who would represent that:

1.

Plaintiffs were on August 16, 1988, at the time of the filing of the Original Petition herein, and at the time of the filing of this Petition for Removal, citizens of the State of Louisiana.

2.

Defendant, Linda Claing Hamby, was on August 16, 1988, at the time of the filing of the Original Petition

herein, and as of the time of the filing of this Petition for Removal, a citizen of the State of Georgia; and United Services Automobile Association, was on August 16, 1988, at the time of the filing of the Original Petition herein, and as of the time of the filing of this Petition for Removal, a foreign insurer whose principal place of business and whose citizenship for purposes of diversity is a state other than the State of Louisiana.

3.

The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand and No/100 ($10,000.00) Dollars.

4.

The Original Petition in this matter was filed in the 19th Judicial District Court for the Parish of East Baton Rouge and is now pending as Docket Number 333,963 "L" on the docket of that Court. That proceeding is a civil action for damages sustained by Luz Stout, Lloyd Stout, and Angie Stout as a result of an automobile accident involving a vehicle owned by Lloyd Stout and driven by Luz Stout, in which vehicle Angie Stout was a guest passenger, and a vehicle owned by James Hamby and driven by Linda Claing Hamby, which vehicle was allegedly insured by United Services Automobile Association.

5.

Service of process was effected upon United Services Automobile Association on August 25, 1988. Service of process has not been effected upon Linda Claing Hamby.

6.

A copy of the Original Petition filed in the 19th Judicial District Court for the Parish of East Baton Rouge is attached hereto and made a part hereof.

7.

Federal subject matter jurisdiction is proper under 28 U.S.C.A. 1441, and venue is proper under 28 U.S.C.A. 1391(a) and was also proper had the Petition originally been brought in the United States District Court for the Middle District of Louisiana.

8.

This proceeding is therefore, removable to the United States District Court for the Middle District of Louisiana under 28 U.S.C.A., and the Petition for Removal has been timely filed within thirty (30) days of service of process on Defendant.

9.

Defendant, United Services Automobile Association, has filed concurrently herewith a bond, in accordance with Rule 3(E) of the General Rules of This Court, conditioned that they will pay costs and disbursements

incurred by reason of these removal proceedings in the event that it is deemed removal is not proper.

WHEREFORE, Defendant, United Services Automobile Association, prays that the above entitled and numbered proceeding be removed to the United States District Court for the Middle District of Louisiana in accordance with 28 U.S.C.A. 1441.

By Attorneys,

SEALE, SMITH & PHELPS

BY: /s/ John Swanner
JOHN SWANNER

CERTIFICATE

I hereby certify that a copy of the above and foregoing has been mailed this date to all counsel of record.

Baton Rouge, Louisiana, this 21st day of September, 1988.

/s/ John Swanner
JOHN SWANNER

EXHIBIT R-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT D. LILES, JR. and
LOIS LILES — PLAINTIFFS

vs. — NO. EC86-336-S-D

UNITED SERVICES AUTOMOBILE
ASSOCIATION — DEFENDANT

PETITION FOR REMOVAL

(Filed Nov. 19, 1986)

Now comes United Services Automobile Association, a corporate defendant in the above cause, and files this, its Petition for Removal of this cause from the Circuit Court of Lee County, Mississippi, in which it is now pending, to the District Court of the United States in and for the Eastern Division of the Northern District of Mississippi, held in the City of Aberdeen, Mississippi, in said District and State, and shows to the Court the following facts:

1. That this cause of action was commenced in the Circuit Court of Lee County, Mississippi on October 17, 1986 and that process was served on Mississippi Insurance Commissioner on October 21, 1986, and was mailed to Defendant that day and was received a day or two later; that a copy of the Plaintiffs' Complaint setting forth the claim for relief upon which the action is based, was first received by the Petitioner on a day or two after October 21, 1986.

2. That the action is one of the civil nature, over which the District Courts of the United States have original jurisdiction, being a controversy between citizens of

different states; the said action being brought by the Plaintiffs is for recovery for the alleged bodily injuries and damages incurred as a result of an automobile collision which occurred on the streets of Tupelo, Mississippi on or about November 27, 1984.

3. That the amount in dispute exceeds the sum of ten thousand dollars, exclusive of interest and costs, the suit being for the sum of $100,000.00 actual damages, as will more fully appear by the Plaintiffs' Complaint, a copy of which is hereto attached and which is referred to and made a part hereof.

4. That, at the time of the commencement of this action, and since that time the Plaintiffs were and are now residents and citizens of the State of Mississippi and of the County of Lee in said State of Mississippi and that this Defendant is a corporate non-resident of the State of Texas, whose street and post office address is: United Services Automobile Association, U.S.A.A. Bldg., San Antonio, Texas 78288, and is not now and was not at the time of the institution of this action nor at any time a citizen or resident corporation of the State of Mississippi.

5. That the Defendant, United Services Automobile Association, files herein a bond, with good and sufficient sureties for paying all costs and disbursements incurred by reason of these removal proceedings, if this Court shall hold that the action is nor removable or improperly removed thereto, as provided by the statutes of the United States.

* * *

EXHIBIT R-2

VERIFICATION

STATE OF MISSISSIPPI

COUNTY OF UNION

Hugh N. Clayton, of lawful age, being duly sworn upon his oath says that he is one of the attorneys for the Petitioner herein; that he has prepared and read the above and foregoing Petition for Removal, and that the matters and things contained therein are true, as he verily believes.

/s/ Hugh N. Clayton

Subscribed and sworn to before me this, the 19th day of November, 1986.

/s/ Peggy Crumcter
Notary Public in and for
Union County, Mississippi

SEAL

My commission expires:

My Commission Expires March 4, 1989

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT D. LILES, JR. AND
LOIS LILES — PLAINTIFFS

VS. — EC 86-336-S-D

UNITED SERVICES AUTOMOBILE
ASSOCIATION — DEFENDANT

RESPONSE TO REQUEST FOR ADMISSIONS

Now comes the defendant, United Services Automobile Association, and in answer to the plaintiff's request for admission, says:

1. That the plaintiffs, Robert D. Liles, Jr. and Lois Liles are adult resident citizens of Lee County, Mississippi.

ANSWER TO NO. 1: Admitted.

2. That the Defendant, United Services Automobile Association is an insurance company, licensed and doing business in the State of Mississippi.

ANSWER TO NO. 2: Denied. United Services Automobile Association is a reciprocal inter-insurance exchange as opposed to "an insurance company."

3. That prior to November 27, the Defendant issued to Robert D. Liles, Jr., as named insured, for valuable consideration, a liability insurance policy hearing the number 107 79 91U 7103 6.

ANSWER TO NO. 3: Admitted.

4. That the said policy was in full force and effect on November 27, 1984.

ANSWER TO NO. 4: Admitted.

* * *

EXHIBIT R-3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT D. LILES, JR.
ET UX — PLAINTIFF

VS. — CIVIL ACTION NO. EC86-336-S-D

UNITED SERVICES AUTOMOBILE ASSOCIATION — DEFENDANT

PRETRIAL ORDER

(Filed Jul 12 1988)

1. A pretrial conference was held in this matter on the 18th day of February 1988, at 1:30 P.M. at the United States Courthouse at Aberdeen, Mississippi before U. S. Magistrate Jerry A. Davis.

2. The following counsel appeared:

a. For the Plaintiff:

Name	Address	Telephone
John L. Long	315 Magazine Street Tupelo, MS 38801	601-842-2364

b. For the Defendant:

Name	Address	Telephone
John H. Dunbar	P.O. Drawer 707 Oxford, MS 38655	601-234-8775

c. For other Parties:

Party	Lawyer's Name	Address	Telephone

3. The pleadings are amended to conform with this pretrial order.

4. The following claims (including claims stated in the complaint), counter-claims, third-party claims, cross-claims, etc., have been filed:

U-coverage claims for all damages for bodily injury (including all reasonable and necessary medical expenses incurred whether paid or unpaid) caused by the negligence of an uninsured motorist.

5. The basis for jurisdiction is:

Diversity of citizenship jurisdictional amount in excess of $10,000. (28 U.S.C. § 1332 and 28 U.S.C. § 1441).

There is the following jurisdictional question:

Lack of diversity and/or severance of case.

6. There are pending motions as follows:

Oral motions made at hearing will be reduced to writing.

The Defendant reserves the right to use any of the Plaintiffs' witnesses in its case-in-chief.

Will testify by deposition:

Indicate whether the entire deposition, or only portions thereof, will be used. Not later than 20 days prior to trial counsel shall confer for the purpose of resolving all controversies concerning depositions. All such controversies not so resolved shall be submitted to the court not later than 10 days prior to trial. All objections not submitted within that time are waived.

Dr. Tom McDonald, in part.

14. This is a jury case.

15. Counsel suggest the following additional matters to aid in the disposition of the action:

JHD DLL

16. Counsel estimate the length of the trial will be 2 full days.

17. This pretrial order has been formulated at a pretrial conference before the United States Magistrate, notice of which was duly served upon all parties, and at which the parties attended as hereinabove shown. Reasonable opportunity has been afforded for corrections or additions prior to signing. This order will control the course of the trial, as provided by the Rule 16, Federal Rules of Civil Procedure, and it may not be amended except by consent of the

parties and the court, or by order of the court to prevent manifest injustice.

This the 11th day of July, 1988.

/s/ Illegible
UNITED STATES DISTRICT COURT

/s/ John L. Long
Attorney for Plaintiff

/s/ John H. Dunbar
Attorney for Defendant

Entry of the above Pretrial Order recommended, this the 8th day of July, 1988.

/s/ Jerry D Davis
UNITED STATES MAGISTRATE

EXHIBIT R-4

IN THE CIRCUIT COURT OF
LEE COUNTY, MISSISSIPPI

ROBERT D. LILES, JR. AND LOIS LILES — PLAINTIFFS

VS. — CAUSE NO. 20,499

UNITED SERVICES AUTOMOBILE ASSOCIATION — DEFENDANT

AMENDED COMPLAINT

Comes now the Plaintiffs, Robert D. Liles, Jr. and Lois Liles, and brings this cause of action against Defendant, United Services Automobile Association and for cause of

action would respectfully show unto the Court the following:

COUNT ONE

-1-

That the Plaintiffs, Robert D. Liles, Jr. and Lois Liles, are adult resident citizens of Lee County, Mississippi and that the Defendant, United Services Automobile Association, is an unincorporated association and as an entity, licensed and doing business in the State of Mississippi, who has designated for the purpose of accepting its legal process in the State of Mississippi, George Dale, Commissioner of Insurance, Jackson, Mississippi.

-2-

That prior to November 27, 1984, Defendant issued to Plaintiff, Robert D. Liles, Jr., as named insured, for valuable consideration, a liability insurance policy bearing the number 107 79 9IU 7103 6. That said policy was in full force and effect on November 27, 1984. That under the terms of said policy, Defendant, among other things, agreed to pay all sums which the Plaintiffs would be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injuries sustained by Plaintiff which was caused by an accident arising out of the ownership, maintenance, or

use of such uninsured motorist vehicle. That on November 27, 1984, Lois Liles, was insured under the terms of said policy of insurance.

-3-

That a true correct copy of the declaration sheet and insurance policy is attached to the original Complaint and marked Exhibit "A" and is hereby incorporated by reference thereto.

* * *

EXHIBIT R-5

IN THE CIRCUIT COURT OF LEE COUNTY MISSISSIPPI

ROBERT D. LILES, JR. AND LOIS LILES — PLAINTIFFS

VS. — CAUSE NO. 20,499

UNITED SERVICES AUTOMOBILE ASSOCIATION — DEFENDANT

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT

COMES NOW the defendant, United Services Automobile Association (USAA), and moves this Court to strike the plaintiff's amended complaint for failure to

seek leave of court to amend. In support of this motion, defendant would show the following:

(1) This case was originally filed in the Circuit Court of Lee County, Mississippi in 1986. Before any responsive pleading was filed in the state court, the case was removed to the Federal District Court, Northern District of Mississippi.

(2) After removal, the defendant filed an answer, discovery was completed, and the case went to a jury trial in July, 1988. The federal court entered judgment on the jury verdict.

(3) After judgment was entered, the plaintiffs filed several post-trial motions. While these motions were pending, the plaintiffs also filed a motion to remand in October, 1989, alleging lack of diversity jurisdiction on the ground that defendant was an unincorporated association with members in Mississippi. The defendant had to agree.

(4) The federal district court vacated its final judgment and remanded the case to the Circuit Court of Lee County, Mississippi.

(5) After the remand, the plaintiffs filed an amended complaint, without seeking leave of Court, representing to the defendant that they were amending as a matter of course because no responsive pleading had been filed in the state court. The plaintiffs' post-trial motions are still pending.

(6) State law controls the effect of pleadings filed in federal court in a removed case that is later remanded.

(7) There appears to be no precedent in Mississippi holding that pleadings filed in federal court are of no effect once the case has been remanded. In the absence of such precedent, the defendant moves the Court for an order requiring the plaintiffs to seek leave of court to amend their complaint, particularly when post-trial motions are pending.

(8) Unless the plaintiffs are required to seek leave of court before amending their complaint, the defendant will be given no opportunity to show the prejudice that will result from an amendment at this late stage of the proceedings, and will have no remedy for this prejudice.

WHEREFORE, premises considered, the defendant moves the court for an order striking plaintiffs' amended complaint for failure to seek leave of court to amend.

Respectfully submitted, this 15 day of December, 1989.

HOLCOMB, DUNBAR,
CONNELL, CHAFFIN
& WILLARD
P.O. Drawer 707
Oxford, MS 38655
(601) 234-8775

BY /s/ John H. Dunbar
JOHN H. DUNBAR

EXHIBIT R-6

IN THE CIRCUIT COURT OF
LEE COUNTY, MISSISSIPPI

ROBERT D. LILES, JR. AND LOIS LILES — PLAINTIFFS

VS. — CAUSE NO. 20,499

UNITED SERVICES AUTOMOBILE ASSOCIATION — DEFENDANT

MOTION FOR SUMMARY JUDGMENT

COMES NOW the defendant, United Services Automobile Association (USAA), and files a motion for summary judgment pursuant to Miss.R.Civ.P. 56. In support of its motion, USAA would show the following:

(1) This case was originally filed in the Circuit Court of Lee, County, Mississippi in 1986. The Plaintiff erroneously alleged and the Defendant erroneously admitted that USAA was a foreign corporation. Before any responsive pleading was filed in the state court. The case was removed to the Federal District Court for the Northern District of Mississippi.

(2) After removal, the defendant filed an answer, discovery was completed, and two years later, the case went to a jury trial in July, 1988. The jury found for Plaintiff Lois Liles and awarded $500 in damages; the jury returned a verdict against Plaintiff Robert Liles. The federal court entered judgment on the jury verdict.

(3) After judgment was entered, the Plaintiff filed several post-trial motions. While these motions were still

pending, the plaintiffs also filed a motion to remand in October, 1989, alleging lack of diversity jurisdiction on the ground that defendant was an incorporated association with members in Mississippi. The defendant had to agree.

(4) The federal district court had no choice but to remand the case to the Circuit Court of Lee, County, Mississippi.

(5) State law controls how the state court shall proceed when a case is remanded to state court.

(6) There is no precedent in Mississippi about how the state court should proceed under the circumstances of this case.

(7) In the absence of such precedent, the defendant moves for a ruling that the plaintiffs are not entitled to another jury trial. Other states have held that a case is remanded to the state court in the same procedural posture it occupied in federal court at the time of remand.

(8) The plaintiffs had a fair and complete opportunity to litigate their claim in federal court. This Court should recognize the outcome of that proceeding and avoid the substantial expense to all involved of another jury trial, unless one is justified by the plaintiff's post-trial motion. If no new trial is justified, the court should enter a summary judgment based on the outcome of the trial in federal court.

WHEREFORE, premises considered, the defendant moves this court for an order granting summary judgment based on the outcome of the federal court proceeding.

Respectfully submitted, this 15 day of December, 1989.

HOLCOMB, DUNBAR,
CONNELL, CHAFFIN
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P.O. Drawer 707
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(601) 234-8775

By /s/ John H. Dunbar
JOHN H. DUNBAR

IN THE CIRCUIT COURT OF
LEE COUNTY, MISSISSIPPI

ROBERT D. LILES, JR. AND LOIS LILES — PLAINTIFFS

VS.

CAUSE NO. 20,499

UNITED SERVICES AUTOMOBILE ASSOCIATION — DEFENDANT

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendant United Services Automobile Association (USAA), submits this brief in support of its motion for summary judgment.

This case was originally filed in the Circuit Court of Lee County, Mississippi. It was later removed to federal court, where the case was tried to a jury. The jury returned a verdict. The federal court entered judgment on the jury's verdict. After judgment was entered, the plaintiffs filed several post-trial motions. While these motions

were pending, the plaintiffs filed a motion to remand for lack of diversity jurisdiction on the ground that the USAA was an unincorporated association with members in Mississippi. The defendant had to agree. The federal court granted the motion, vacated its judgment, and remanded the case. The question now, is how to proceed.

When a case is remanded from the federal courts, state law controls the effect to be given to the proceedings in federal court and how state court should proceed. *Ayres v. Wiswall*, 112 U.S. 187, 190-91 (1884); *Williams v. St. Joe Mineral Corp.*, 369 S.W.2d 192, 194 (Mo. App. 1982); *Edward Hansen, Inc. v. Kearny Post Office Associates*, 399 A.2d 319, 321, 166 N.J. Super. 161 (N.J. Super. 1979); *Bolder v. Brazile*, 172 So. 2d 304, 310 (La. App. 1965) (and cases cited therein).

Thus, if a state wishes to do so, it may give effect to some or all of the proceedings in the federal court. *See e.g. Hansen*, 399 A.2d at 321 (discussing various cases where state courts gave effect to federal pleadings); *Citizens National Bank of Grant County v. First National Bank in Marion*, 331 N.E.2d 471, 476, 165 Ind.App. 116 (Ind. App. 1975) (after remand, state court could (illegible) *Cotton*, 269 S (illegible) at 424.[1]

Mississippi apparently has not considered where to begin in state court after remand. The only case that mentions the matter, *Germania Fire Ins. Co. v. Francis*, 52

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[1] Other courts have held to the contrary. *Federal Deposit Insurance Corp. v. National Surety Corp.*, 281 N.W.2d 616 (Iowa 1979): *New York City v. New York Jets Football Club*, 304 N.Y.S.2d 799 (N.Y.Sup. 1977); *see also* 76 C.J.S. *Removal of Causes section* (illegible)

Miss. 457 (1876), does not directly address the effect to be given to federal proceedings. In *Germania*, the appellant argued that the case in circuit court was discontinued by its removal to federal court. Under the rules of common law pleading, a discontinuance was similar to a dismissal for failure to prosecute. The Court held that the removal to federal court had the effect of delaying, rather than discontinuing, the proceedings in circuit court and, when the case was remanded, the circuit court could proceed with the case as though removal had not occurred. Although the Court's language could be taken to suggest that the case should proceed in remand in the same posture it was in when removed, the Court's holding was clearly concerned with whether Francis' case should have been dismissed for failure to prosecute. The Court was not considering whether a state court as a rule should proceed where the federal court left off.

As noted in *Hansen* and *Cotton*, however, a federal court on removal would give effect to any proceedings that had taken place in the Mississippi courts before the case was removed. As in Georgia, Mississippi's rules of civil procedure mirror the federal rules. Thus, logic and comity would both suggest that Mississippi should follow the lead of *Williams*, 369 S.W.2d at 194, and *Hansen*, 399 A.2d at 323, and give effect to proceedings that have taken place in the federal courts before the case is remanded.

The District Court for the Northern District of Mississippi held extensive proceedings in this case, up to and including a jury trial on the merits. The proceedings in federal court spanned three years.

The post-trial motions still pending will provide an opportunity for the plaintiffs to address any perceived unfairness in their trial before Judge Senter.

Mississippi should adopt a rule that a case remanded from the federal courts to Mississippi courts proceeds in the same procedural posture that it left the federal courts. That result would be the most logical, economical, expeditious, and fair way to resolve the plaintiffs claims. They have had their day in court.

The Court should enter a summary judgment based on the outcome of the trial in federal court, unless the plaintiffs' post-trial motions merit a new trial.

Respectfully submitted, this 15 day of December, 1989.

HOLCOMB, DUNBAR,
CONNELL, CHAFFIN
& WILLARD
P.O. Drawer 707
Oxford, MS 38655
(601) 234-8775

BY: /s/ John H. Dunbar
JOHN H. DUNBAR

EXHIBIT S-1

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION CVS

NORTH CAROLINA

CURRITUCK COUNTY

UNITED SERVICES AUTOMOBILE ASSOCIATION, Plaintiff, v. ANITA M. JELKS, Defendant.	)	COMPLAINT

The plaintiff, seeking a declaratory judgment pursuant to N.C.G.S. Sec. 1-253 *et. seq.* with respect to the controversies hereinafter set forth, alleges and says that:

1. The plaintiff, United Service Automobile Association (hereinafter "USAA"), is a corporation organized and existing under the laws of the State of Texas and is duly licensed and authorized to do business and was doing business in North Carolina at all times referred to herein.

2. The plaintiff USAA is informed and believes that the defendant Anita M. Jelks is a citizen and resident of Currituck County, North Carolina.

3. The plaintiff USAA is informed and believes and therefore alleges that on or about August 19, 1986 at

approximately 9:24 a. m., defendant Anita M. Jelks was traveling by automobile on Princess Ann Road in Virginia Beach, Virginia when she took an evasive maneuver to avoid a head-on collision with a phantom vehicle traveling from the opposite direction.

* * *

EXHIBIT S-2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION

UNITED SERVICES
AUTOMOBILE ASSOCIATION,

Plaintiff CIVIL ACTION NO. ___

v.

ANITA M. JELKS,

Defendant

PETITION FOR REMOVAL

Defendant, Anita M. Jelks, petitions this Court pursuant to 28 U.S.C., Section 1441(a) and 28 U.S.C., Section 1332(a)(1), fo [sic] removal of the action brought against her in the General Court of Justice, Superior Court Division, for the County of Currituck, North Carolina, by

United Services Automobile Association, File Number 88-CVS-220. In support if this Petition, defendant states

1. Plaintiff filed a Complaint against defendant in the General Court of Justice, Superior Court Division, for the County of Currituck, North Carolina, on or about October 13, 1988, a copy of which Complaint is attached hereto and by this reference made part hereof.

2. On or about October 17, 1988, a Civil Summons and Complaint were served on defendant, Anita M. Jelks.

3. This Petition for Removal is timely filed under 28 U.S.C., Section 1446(b).

4. At the time of the commencement of this action, at the filing of this Petition, and at all times mentioned herein, defendant, Anita M. Jelks, was a resident and citizen of the State.

* * *

EXHIBIT S-3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT IF NORTH CAROLINA
ELIZABETH CITY DIVISION
CIVIL ACTION NO. 88-58-CIV-2

UNITED SERVICES AUTOMOBILE ASSOCIATION, Plaintiff, v. ANITA M. JELKS, Defendant.	REPLY TO COUNTERCLAIM

NOW COMES The plaintiff reply to the Counterclaim against it by defendant and alleges and says:

FIRST DEFENSE

This court lacks subject matter jurisdiction of this matter removed to Federal Court by the defendant purportedly pursuant to Title 28, U.S.C. Sec. 1332 on the grounds of diversity of citizenship and amount in controversy. There is no diversity of citizenship because, contrary to as alleged in the Complaint which is the subject of a proposed amendment, plaintiff is an unincorporated association with its principal place of business in Texas, and is duly authorized to do business with and has members in North Carolina, so there is no diversity of citizenship between plaintiff and defendant who is a citizen and resident of North Carolina.

SECOND DEFENSE

The Counterclaim against plaintiff fails to state a claim upon which relief can be granted and should be dismissed.

* * *

EXHIBIT S-4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION
CIVIL ACTION NO. 88-58-CIV-2

UNITED SERVICES AUTOMOBILE ASSOCIATION, Plaintiff, v. ANITA M. JELKS, Defendant.	PROPOSED AMENDMENT TO COMPLAINT

NOW COMES the plaintiff United Services Automobile Association and amends paragraph one of its Complaint to allege and say as follow:

1. Plaintiff is organized and existing as an unincorporated insurance association with its principal place of business in Texas, with members in North Carolina and

was authorized to do business in North Carolina at all times referred to herein.

This the 14th day of December, 1988.

YOUNG, MOORE, HENDERSON & ALVIS, P.A.

By /s/ Evelyn M. Coman
Evelyn M. Coman
Attorneys for Plaintiff
P.O. Box 31627
Raleigh, North Carolina 27622
(919) 782-6860

EXHIBIT S-5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NORTH CAROLINA
ELIZABETH CITY DIVISION

NO. 88-58-CIV-2

UNITED SERVICES AUTOMOBILE ASSOCIATION, Plaintiff, vs. ANITA M. JELKS, Defendant.	)	MOTION TO REMAND

NOW COMES the plaintiff United Services Automobile Association and moves the court pursuant to Rule 7 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1447 to remand this action to state court on the basis

that diversity of jurisdiction between the parties does not exist. In support thereof the plaintiff shows the court that it is an unincorporated insurance association with members in North Carolina and defendant is a resident and citizen of Currituck County, North Carolina.

WHEREFORE, the plaintiff moves the court to remand this action to state court in Currituck County, North Carolina where it was instituted by plaintiff since there is no federal jurisdiction over this action due to a lack of diversity of citizenship between the parties.

This the 19th day of January, 1989.

YOUNG, MOORE, HENDERSON
& ALVIS, P.A.

BY: /s/ Evelyn M. Coman
EVELYN M. COMAN
Attorneys for Plaintiff
Post Office Box 31627
Raleigh, North Carolina
27622
919/782-6860

* * *

has members in North Carolina. Defendant is a citizen and resident of North Carolina and has been at all times that is the subject of this action. It has long been recognized that an unincorporated association is a citizen of each state of its constituent members. See, *Chapman v. Barney*, 129 U.S. 677, 9 S.Ct. 426, 32 L.Ed. 800 (1889). The courts since *Chapman* look to determine citizenship of all members of the unincorporated association in determining whether diversity between parties exists to confer jurisdiction on the federal court. *Arbuthnot v. Automobile*

Ins. Ass'n, 264 F.2d 260 (10th Cir. 1959); *Retirement System v. Kalkus*, 764 F.2d 1015 (4th Cir. 1985).

USAA has been recognized as an unincorporated insurance association and is considered to be a citizen in every state in which it has members such that if it is a party to a lawsuit with any member whose state citizenship coincides, the federal district court has no diversity. *Baer v. USAA*, 859 F.2d 842 (2nd Cir. 1974), *Tuck v. USAA*, 859 F.2d 842 (10th Cir. 1988). As the court noted in *Baer*, USAA is an inter-insurance exchange whose insureds are referred to by the company as members. USAA has members in North Carolina so is considered to be a citizen of North Carolina. Since both USAA and Mrs. Jelks are citizens of North Carolina, there is no diversity of citizenship between the parties and the case should be remanded to state court for lack of federal jurisdiction.

* * *

EXHIBIT ST

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED SERVICES AUTOMOBILE ASSOCIATION, Plaintiff V. *JEREMY AREY,* Serve at: 3114 Fincastle Turnpike Tazewell, Virginia 24651, *OLIVIA DIANE ALTIZER,* Administratrix of the Estate of William Bennett Altizer, Deceased, Serve at: Route 3 Box 157A Tazewell, Virginia 24651 *VIRGINIA FARM BUREAU MUTUAL INSURANCE COMPANY,* Serve: Evelyn F. John, Reg. Agent 200 West Grace Street Richmond, Virginia 23261 *STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,* Serve: Brian K. Carlson, Reg. Agent 1500 State Farm Blvd. Charlottesville, Virginia 22909 Defendants	Civil Action No. 89-0139-A

COMPLAINT
(Filed July 31, 1989)

1. Plaintiff, United Services Automobile Association (USAA), is a citizen of Texas by virtue of its being incorporated under Texas law and by virtue of having its principal place of business in Texas.

2. Defendants Jeremy Arey (Arey) and Olivia Diane Altizer (Altizer), Administratrix of the Estate of William Bennett Altizer, Deceased, are citizens of Virginia.

3. Defendant Virginia Farm Bureau Mutual Insurance Company (Virginia Farm Bureau) is a citizen of Virginia by virtue of its being incorporated under Virginia law and by virtue of having its principal place of business in Virginia.

4. Defendant State Farm Mutual Automobile Insurance Company (State Farm) is a citizen of Illinois by virtue of its being incorporated under Illinois law and by virtue of having its principal place of business in Illinois.

5. The amount in controversy, exclusive of interest and costs, exceeds $50,000.00.

6. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1332.

7. Virginia Farm Bureau issued a liability insurance policy (the VFB Policy) to Thornton Newlon, covering the use by certain persons of a 1986 Honda CRX automobile (the Newlon Vehicle) owned by him. The VFB Policy was in effect at all times relevant to this action.

8. USAA issued a liability insurance policy (the USAA Policy) to Arey's father, covering certain persons.

The limits of the liability coverage are $100,000.00 per person and $200,000.00 per accident. The USAA Policy was in effect at all times relevant to this action.

9. State Farm issued an insurance policy to William Bennett Altizer's father, providing uninsured motorist (UM) coverage to certain persons, including William Bennett Altizer. The policy issued by State Farm was in effect at all times relevant to this action.

10. On or about June 4, 1989, the Newlon Vehicle was involved in an accident (the Accident) in Tazewell County, Virginia, that resulted in the death of William Bennett Altizer.

* * *

EXHIBIT T

Stephen J. Laskero, Esq.
HAASIS, POPE & CORRELL, A.P.C.
101 W. Broadway, Suite 1130
San Diego, California 92101
Telephone (619) 236-9933

Attorneys for Plaintiff,
UNITED SERVICES AUTOMOBILE ASSOCIATION,
A RECIPROCAL INTERINSURANCE EXCHANGE

UNITED STATES DISTRICT COURT OF CALIFORNIA

SOUTHERN DISTRICT, CIVIL DIVISION

UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTERINSURANCE EXCHANGE, Plaintiff, v. WILLIAM S. STRYKER, M.D., an individual; MARY I. STRYKER, an individual; WILLIAM S. STRYKER, M.D., a professional corporation, Defined Benefit Pension Plan; MARY FRANCES BLACKMAN, and individual, MARK E. BLACKMAN, an individual, MOCCAS, INC., a California corporation, Inclusive. Defendants.	CASE NO. 862272S(IEG) COMPLAINT FOR DECLARATORY RELIEF 28:2201

Plaintiff, United Services Automobile Association, a reciprocal interinsurance exchange, with its principal

place of business in San Antonio, Texas, complains against defendants, and each of them, and alleges as follows:

1. At all material times herein, plaintiff, United Services Automobile Association (hereinafter referred to as "USAA") was and is a reciprocal interinsurance exchange with its principal place of business in San Antonio, Texas. The plaintiff was and is authorized by the insurance commissioner of the State of California to engage in the practice of writing insurance in the State of California; and was and is engaged in said business in the State of California, County of San Diego.

2. Plaintiff alleges on information and belief that at all material times herein, defendant, William S. Stryker, M.D., is an individual who is a citizen of the State of California for diversity purposes.

3. Plaintiff alleges on information and belief that at all material times herein, defendant, Mary I. Stryker, is an individual who is a citizen of the State of California for diversity purposes.

4. Plaintiff alleges on information and belief that at all material times herein, defendant, William S. Stryker, M.D., a Professional Corporation Defined Benefit Pension Plan, is a pension plan organized and existing under the laws of the State of California, and is a citizen of the State of California for diversity purposes.

5. Plaintiff alleges on information and belief that at all material times herein, defendant, Mary Frances Blackman, aka Bambi Blackman, is an individual who is a citizen of the State of California for diversity purposes.

6. Plaintiff alleges on information and belief that at all material times herein, defendant, Mark E. Blackman, is an individual who is a citizen of the State of California for diversity purposes.

7. Plaintiff alleges on information and belief that at all material times herein, defendant, Moccas, Inc., was and is a California corporation organized and existing under the laws of the State of California, and qualified to do business in the County of San Diego, with its principal place of business in the State of California and is a citizen of the State of California for diversity purposes.

8. This Declaratory Relief Action is brought under 28 U.S.C. Section 2201 and Rule 57 of the Federal Rules of Civil Procedure. The jurisdiction of this court is based on diversity of citizenship existing between the parties. The matter in controversy exceeds the sum of $15,000.00, exclusive of interest and costs.

9. A suit was filed in the Superior Court of the State of California on May 21, 1985 and amended on February 20, 1986, alleging misrepresentations, fraud, breach of fiduciary duty, negligent trust management and professional negligence. A Summons and Complaint have been served on the defendants therein and the case is pending before the Superior Court of the State of California.

10. Venue is proper in this district under Section 28 U.S.C. Section 1391, in that an actual controversy exists and the claim arose in the County of San Diego, State of California.

* * *

EXHIBIT II-I

EZRA, O'CONNOR & MOON
Attorneys at Law
A Law Corporation

MICHAEL F. O'CONNOR 1098-0
220 South King Street
20th Floor, Central Pacific Plaza
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Telephone: 545-3030

Attorneys for UNITED SERVICES
AUTOMOBILE ASSOCIATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Texas corporation, Plaintiff, vs. EARL W. AH MOO, D.D.S., AMERICAN DENTAL PLAN, INC., a Hawaii corporation, ARGONAUT MIDWEST INSURANCE COMPANY, an Illinois corporation, DENTAGUARD, INC., a Hawaii corporation, M.F. CONSULTANTS, INC., a Hawaii corporation and FRANKLIN TOM, D.D.S., dba Diversified Dental Services, Defendants.	CIVIL NO. 85 illegible COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF; EXHIBIT "A"; SUMMONS (Filed June 4, 1985)

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Comes now UNITED SERVICES AUTOMOBILE ASSOCIATION, a Texas corporation (hereinafter referred to as USAA) for a complaint against Defendants above named, to allege and to aver as follows:

FIRST CAUSE OF ACTION

1. This action is of a civil nature brought pursuant to 28 U.S.C. § 1332. The amount in controversy, exclusive of interest and costs, is a sum in excess of $10,000 and every issue of law and fact herein is wholly between citizens of different states.

2. Plaintiff is a corporation duly organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Texas and is hereinafter referred to as "USAA".

3. Defendant EARL W. AH MOO, D.D.S. is domiciled in and a citizen of the State of Hawaii, is licensed to practice dentistry in the State of Hawaii and is hereinafter referred to as "AH MOO".

4. Defendant AMERICAN DENTAL PLAN, INC. is a corporation duly organized and existing under the laws of the State of Hawaii with its principal place of business in Honolulu, Hawaii.

5. Defendant DENTAGUARD, INC. is a corporation duly organized and existing under the laws of the State of Hawaii with its principal place of business in Honolulu, Hawaii.

6. Defendant M. F. CONSULTANTS, INC. is a corporation duly organized and existing under the laws of the State of Hawaii, with its principal place of business in Honolulu, Hawaii.

* * *

EXHIBIT II-2

EZRA, O'CONNOR, MOON & TAM
Attorneys at Law
A Law Corporation

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Attorneys for Plaintiff
UNITED SERVICES AUTOMOBILE ASSOCIATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED SERVICES AUTOMOBILE ASSOCIATION, Plaintiff, vs. EARL W. AH MOO, D.D.S., AMERICAN DENTAL PLAN, INC., a Hawaii corporation, ARGONAUT MIDWEST INSURANCE COMPANY, an Illinois corporation, M.F. CONSULTANTS, INC., a Hawaii corporation and FRANKLIN TOM, D.D.S., dba Diversified Dental Service, Defendant.	CIVIL NO. 85-0523 SCHEDULING CONFERENCE STATEMENT; CERTIFICATE OF SERVICE DATE: April 4, 1986 TIME: 2:00 p.m. JUDGE: Daral G. Conklin (Filed Mar. 27, 1986)

df/275

SCHEDULING CONFERENCE STATEMENT

COMES NOW Plaintiff UNITED SERVICES AUTOMOBILE ASSOCIATION ("USAA"), by and through its attorneys, EZRA, O'CONNOR, MOON & TAM, and hereby submits this Scheduling Conference Statement pursuant to Rule 16 of the Federal Rules of Civil Procedure and Local Rule 235-3(b) of the Rules of the United States District Court for the District of Hawaii.

1. *Service of Process of Parties not yet Served.* All necessary and indispensable parties have been served.

2. *Jurisdiction and Venue.* Jurisdiction of this Court is proper for the following reasons:

a. The amount in controversy exceeds $10,000.00; and

b. There is diversity of citizenship between Plaintiff USAA (incorporated and principal place of business in San Antonio, Texas) and Defendants EARL W. AH MOO (citizen and domiciled in Hawaii); American Dental Plan (incorporated and principal place of business in Hawaii); Dentaguard, Inc. (incorporated and principal place of business in Hawaii); M.F. Consultants (incorporated and principal place of business in Hawaii); Franklin Tom, (citizen and domiciled in Hawaii); Argonaut Midwest Insurance Co. (incorporated and principal place of business in Illinois).

Venue is proper in this Court because the claim arose in Hawaii.

EXHIBIT V-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

LINDA MUCHA	PLAINTIFF
VERSUS	CIVIL ACTION NO. S87-
USAA (United Service Automobile Association)	DEFENDANT

COMPLAINT

COMES NOW The Plaintiff, Linda Mucha, through her attorney, Joe Sam Owen, and complains of the Defendant to-wit:

I.

The Plaintiff is an adult resident citizen of the State of Mississippi, residing in Gulfport, Harrison County, Mississippi.

II.

The Defendant, United Service Automobile Association (USAA), is a foreign corporation organized and existing under and by virtue of the laws of the State of Texas, with principal offices located in the USAA Building, San Antonio, Texas. At all material times mentioned herein the Defendant issued or caused to be issued a certain automobile policy providing uninsured motorist/underinsured motorist coverage for two vehicles. Further, at all

material times mentioned herein the Defendant was licensed to do business within the State of Mississippi.

III.

* * *

EXHIBIT V-2

STATE OF MISSISSIPPI
COUNTY OF HARRISON

AFFIDAVIT OF ATTORNEY

I, Joe Sam Owen, of lawful age being first duly sworn, depose and state as follows:

1. I was attorney of record for the plaintiff in the case of *Linda Mucha v. United Services Automobile Association*, Civil Action No. S87-0569(G), filed on September 10, 1987, in the United States District Court for the Southern District of Mississippi.

2. The basis of the trial court's jurisdiction was diversity of citizenship. The nature of the action for suit was breach of insurance contract. The defendant admitted diversity jurisdiction.

3. During the course of the proceedings, the defendant, USAA, admitted that it was a foreign corporation with principal offices in Texas. USAA did not attempt to dismiss the action for lack of jurisdiction over the subject matter in the absence of complete diversity.

4. The case was settled and dismissed by agreement of the parties on May 16, 1989.

Further affiant sayeth not.

/s/ Joe Sam Owen
JOE SAM OWEN

SWORN TO AND SUBSCRIBED BEFORE ME, this 30 day of October , 1989.

/s/ Deborah A. Butler
NOTARY PUBLIC

EXHIBIT W-1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

SYLVIA HUNTER VAUGHN	PLAINTIFF
VERSUS	NO. EC 84-412
UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE	DEFENDANT

COMPLAINT

(Filed Dec. 12, 1984)

Comes now Sylvia Hunter Vaughn, plaintiff in the above-styled and numbered cause, by and through her attorneys of record, and files this her Complaint against United Services Automobile Association, a Reciprocal Inter-Insurance Exchange, defendant, and says:

FIRST CAUSE OF ACTION

1. Plaintiff is an adult citizen of Lowndes County, Mississippi.

2. The defendant, United Services Automobile association (hereinafter "USAA"), is a non-resident reciprocal inter-insurance exchange of the State of Mississippi, created, organized and existing under and by virtue of the laws of the State of Texas, * which is domiciled and has its principal place of business in * State of Texas and in no other State.

3. This Court has jurisdiction of this action pursuant to U.S.C.A. § 1332(a)(1) in that the matter in controversy exceeds sum or value of ten thousand dollars ($10,000.00), exclusive interest and cost and is between citizens of different states.

On October 25, 1983, and at all times thereafter, USAA ensed* and qualified to do business within the State of Mississippi and was actively engaged, by and through its authorities, in soliciting and insuring risks within the State of Mississippi.

On October 25, 1983, USAA, by and through its duly * agent, issued a standard form automobile liability policy to Francis M. Vaughn, Jr., bearing policy number * 7101.0. Said contract of insurance provided liability * the named insured, Francis M. Vaughn, Jr., on one * International Scout pickup truck and one (1) 1983 Pontiac automobile. The contract of insurance provided initial * six-month term beginning on October 25, 1983, and April 25, 1984. A true and correct copy of the contract * attached

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* Copy missing.

hereto for the reason that the * or misplaced, but the defendant, USAA,

* * *

EXHIBIT W-2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

SYLVIA HUNTER VAUGHN — PLAINTIFF

VERSUS — NO. EC 84-413.

UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE — DEFENDANT

COMPLAINT

(Filed Dec. 12, 1984)

Comes now Sylvia Louise Vaughn, plaintiff in the above-styled and numbered cause, by and through her attorneys of record, and files this her Complaint against United Services Automobile Association, a Reciprocal Inter-Insurance Exchange, defendant, and says:

FIRST CAUSE OF ACTION

1. Plaintiff is an adult citizen of Lowndes County, Mississippi.

2. The defendant, United Services Automobile Association (hereinafter "USAA"), is a non-resident reciprocal inter-insurance exchange of the State of Mississippi, created, organized and existing under and by virtue of the laws of the State of Texas, and which is domiciled and has its principal place of business in the State of Texas and in no other State.

3. This Court has jurisdiction of this action pursuant to 28 U.S.C.A. § 1332(a)(1) in that the matter in controversy exceeds the sum or value of ten thousand dollars ($10,000.00), exclusive of interest and cost and is between citizens of different states.

4. On October 25, 1983, and at all times thereafter, USAA was licensed and qualified to do business within the State of Mississippi and was actively engaged, by and through its authorized agents, in soliciting and insuring risks within the State of Mississippi.

5. On October 25, 1983, USAA, by and through its duly authorized agent, issued a standard form automobile liability insurance policy to Francis M. Vaughn, Jr., bearing policy number 028 10 81U 7101 0. Said contract of insurance provided liability insurance for the named insured, Francis M. Vaughn, Jr., on one (1) International Scout pickup truck and one (1) 1983 Pontiac Grand Prix automobile. The contract of insurance provided initial coverage for a six-month term beginning on October 25, 1983, and ending on April 25, 1984. A true and correct copy of the contract of insurance is not attached hereto for the reason that the same has been lost, destroyed or misplaced, but the defendant, USAA,

* * *

EXHIBIT W-3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

FRANCIS M. VAUGHN, IV — PLAINTIFF

VERSUS — NO. EC 84-414-LS-D

UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE — DEFENDANT

COMPLAINT

(Filed Dec. 12, 1984)

Comes now Francis M. Vaughn, IV, plaintiff in the above-styled and numbered cause, by and through his attorneys of record, and files this his Complaint against United Services Automobile Association, a Reciprocal Inter-Insurance Exchange, defendant, and says:

FIRST CAUSE OF ACTION

1. Plaintiff is an adult citizen of Lowndes County, Mississippi.

2. The defendant, United Services Automobile Association (hereinafter "USAA"), is a non-resident reciprocal inter-insurance exchange of the State of Mississippi, created, organized and existing under and by virtue of the laws of the State of Texas, and which is domiciled and has its principal place of business in the State of Texas and in no other State.

3. This Court has jurisdiction of this action pursuant to 28 U.S.C.A. § 1332(a)(1) in that the matter in controversy exceeds the sum or value of ten thousand dollars ($10,000.00), exclusive of interest and cost and is between citizens of different states.

4. On October 25, 1983, and at all times thereafter, USAA was licensed and qualified to do business within the State of Mississippi and was actively engaged, by and through its authorized *ents, in soliciting and insuring risks within the State of Mississippi.

5. On October 25, 1983, USAA, by and through its duly authorized agent, issued a standard form automobile liability insurance policy to Francis M. Vaughn, Jr., bearing policy number 0 81U 7101 0.* Said contract of insurance provided liability nce* for the named insured, Francis M. Vaughn, Jr., on one International Scout pickup truck and one (1) 1983 Pontiac rix* automobile. The contract of insurance provided initial * for a six-month term beginning on October 25, 1983, and on April 25, 1984. A true and correct copy of the contract nce* is not attached hereto for the reason that the same * lost, destroyed or misplaced, but the defendant, USAA,

* * *

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

SYLVIA HUNTER VAUGHN — PLAINTIFF

VERSUS — NO. EC 84-412-LS-D

UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE — DEFENDANT

ANSWER AND DEFENSES OF
UNITED SERVICES AUTOMOBILE ASSOCIATION

Now comes the United Services Automobile Associa-tion, endant* herein, and files this answer and defenses to the Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against defendant * which any relief can be granted.

SECOND DEFENSE

Defendant pleads a late notice, a breach in the policy * and which is sued on, in that the accident allegedly * on October 25, 1983, and it received no notice of the t* until November 14, 1984, when it received a letter from * for the plaintiff, dated November 6, 1984. That, as a ce,* a letter of reservation of rights has been issued hree* members of the Vaughn family, which have individually *

3. The Defendant admits that it is a non-resident insurance corporation of the State of Mississippi which is qualified to do and is doing business in the State of Mississippi and that plaintiffs have demanded judgment in excess of $10,000, exclusive of interest and costs. Defendant denies the remaining allegations contained in paragraph 3.

4. The Defendant admits the allegations contained in paragraph 4.

5. The Defendant admits the allegations contained in paragraph 5.

6. The Defendant admits the allegations of paragraph 6 subject to the provisions of the policy itself, which speaks for itself.

7. The Defendant avers that it is without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 7.

8. On information and belief, the Defendant admits that on or about December 14, 1983, Francis M. Vaughn, Jr. was driving and operating a motor vehicle in a northerly direction over and along Alabama State Highway No. 17 near Sulligent, Alabama, approaching the Bartahatchie River Bridge. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 8.

9. The Defendant is without knowledge or information

* * *

EXHIBIT W-5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

SYLVIA LOUISE VAUGHN	PLAINTIFF
VERSUS	NO. EC 84-413-LS-D
UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE	DEFENDANT

ANSWER AND DEFENSES OF
UNITED SERVICES AUTOMOBILE ASSOCIATION

Now comes the United Services Automobile Association, defendant herein, and files this answer and defenses to the Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against defendant upon which any relief can be granted.

SECOND DEFENSE

Defendant pleads a late notice, a breach in the policy issued and which is sued on, in that the accident allegedly occurred on October 25, 1983, and it received no notice of the accident until November 14, 1984, when it received a letter from counsel for the plaintiff, dated November 6, 1984. That, as a consequence, a letter of reservation of rights has been issued to the three members of the Vaughn family, which have individually *

* * *

3. The Defendant admits that it is a non-resident insurance corporation of the State of Mississippi which is qualified to do and is doing business in the State of Mississippi and that plaintiffs have demanded judgment in excess of $10,000, exclusive of interest and costs. Defendant denies the remaining allegations contained in paragraph 3.

4. The Defendant admits the allegations contained in paragraph 4.

5. The Defendant admits the allegations contained in paragraph 5.

6. The Defendant admits the allegations of paragraph 6 subject to the provisions of the policy itself, which speaks for itself.

7. The Defendant avers that it is without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 7.

8. On information and belief, the Defendant admits that on or about December 14, 1983, Francis M. Vaughn, Jr. was driving and operating a motor vehicle in a northerly direction over and along Alabama State Highway No. 17 near Sulligent, Alabama, approaching the Bartahatchie River Bridge. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 8.

9. The Defendant is without knowledge or information

* * *

EXHIBIT W-6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

FRANCIS M. VAUGHN, IV — PLAINTIFF

VERSUS — NO. EC 84-414-LS-D

UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE — DEFENDANT

ANSWER AND DEFENSES OF
UNITED SERVICES AUTOMOBILE ASSOCIATION

Now comes the United Services Automobile Association, defendant herein, and files this answer and defenses to the Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim against defendant upon which any relief can be granted.

SECOND DEFENSE

Defendant pleads a late notice, a breach in the policy issued and which is sued on, in that the accident allegedly occurred on October 25, 1983, and it received no notice of the accident until November 14, 1984, when it received a letter from counsel for the plaintiff, dated November 6, 1984. That, as a consequence, a letter of reservation of rights has been issued to the three members of the Vaughn family, which have individually

* * *

3. The Defendant admits that it is a non-resident insurance corporation of the State of Mississippi which is qualified to do and is doing business in the State of Mississippi and that plaintiffs have demanded judgment in excess of $10,000, exclusive of interest and costs. Defendant denies the remaining allegations contained in paragraph 3.

4. The Defendant admits the allegations contained in paragraph 4.

5. The Defendant admits the allegations contained in paragraph 5.

6. The Defendant admits the allegations of paragraph 6 subject to the provisions of the policy itself, which speaks for itself.

7. The Defendant avers that it is without knowledge or information sufficient to form a belief as to the truth of the averment in paragraph 7.

8. On information and belief, the Defendant admits that on or about December 14, 1983, Francis M. Vaughn, Jr. was driving and operating a motor vehicle in a northerly direction over and along Alabama State Highway No. 17 near Sulligent, Alabama, approaching the Bartahatchie River Bridge. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 8.

9. The Defendant is without knowledge or information

* * *

EXHIBIT W-7

STATE OF MISSISSIPPI)
)
COUNTY OF Montgomery)

AFFIDAVIT OF ATTORNEY

I, William Liston, of lawful age being first duly sworn, depose and state as follows:

1. I was attorney of record for the plaintiffs in the case of *Sylvia Hunter Vaughn v. United Services Automobile Association,* Case No. 84-412, (see Complaint, Exhibit "A"), the case of *Sylvia Louise Vaughn v. United Services Automobile Association,* Case No. 84-413, (see Complaint, Exhibit "B"), and the case of *Francis M. Vaughn IV v. United Services Automobile Association,* Case No. 84-414, (see Complaint, Exhibit "C"), filed on December 12, 1984, in the United States District Court for the Northern District of Mississippi, and for the defendants in the case of *United Services Automobile Association v. Sylvia Hunter Vaughn, as Administratrix of the Estate of Francis M. Vaughn, Sylvia Hunter Vaughn, Sylvia Louise Vaughn, and Francis M. Vaughn IV,* Case No. 86-16 (see Complaint, Exhibit "D"), and filed on January 14, 1986, in the same court. These cases were subsequently consolidated.

2. The basis of the trial court's jurisdiction in cases 84-412, 84-413, and 84-414, as pled by the plaintiffs Sylvia Hunter Vaughn, et al., in good faith, was diversity of citizenship pursuant to 28 U.S.C. 1332 (see Exhibits "A", "B" and "C"). The nature of the action was suit on insurance contract for contractual damages and claims ex delicto for breach of contract. The basis of the trial court's jurisdiction in Case No. 86-16 as pled by United Services

Automobile Association was likewise diversity of citizenship pursuant to 28 U.S.C. 1332 (see Exhibit "D"). The nature of the action was complaint for interpleader on uninsured motorist coverage.

3. The status of United Services Automobile Association (USAA) was clearly set forth in the pleadings, including the Complaint filed by USAA (see Exhibit "D"), to be that of a reciprocal interinsurance exchange. Nevertheless, neither in a Motion to Dismiss nor in its Answer (see Exhibit "E", "F" and "G"), nor in any other pleading did USAA raise as a defense the lack of subject matter jurisdiction by the trial court over the lawsuit due to lack of diversity because USAA was an unincorporated association with members in the plaintiffs' home state.

4. The Motion for Summary Judgment (see Exhibit "H") filed by USAA in the consolidated cases involved a substantive state law question concerning UM stacking and was unrelated to any diversity question. The trial court granted the Motion and the cases were dismissed (see Order, Exhibit "F").

Further affiant sayeth not.

/s/ William Liston
William Liston

Subscribed and sworn to before me this 6th day of Oct. 1989.

/s/ Linda A. Tompkin
Notary Public

My Commission Expires:

4-19-91

EXHIBIT W-8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED SERVICES AUTOMOBILE ASSOCIATION, A RECIPROCAL INTER-INSURANCE EXCHANGE — PLAINTIFF

V. — CIVIL ACTION NO. ___

SYLVIA HUNTER VAUGHAN, AS ADMINISTRATRIX OF THE ESTATE OF FRANCIS M. VAUGHAN, JR.
SYLVIA HUNTER VAUGHAN, INDIVIDUALLY,
SYLVIA LOUISE VAUGHAN, INDIVIDUALLY,
AND FRANCIS M. VAUGHAN, IV — DEFENDANTS

COMPLAINT FOR INTERPLEADER AND DECLARATORY JUDGMENT

The plaintiff, United Services Automobile Association (hereinafter "USAA"), files this complaint for interpleader pursuant to Rule 22 of the Federal Rules of Civil Procedure, and for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure, and states as follows to the Court:

I.

PARTIES

1. USAA is a reciprocal inter-insurance exchange which is organized and existing under the laws of the State of Texas with its principal place of business in the State of Texas.

a. Sylvia Hunter Vaughan, as the Administratrix of the Estate of Francis M. Vaughan, Jr., is an adult resident citizen of Lowndes County, Mississippi.

3. Sylvia Hunter Vaughan, individually, is an adult resident citizen of Lowndes County, Mississippi.

4. Sylvia Louise Vaughan, individually, is an adult resident citizen of Lowndes County, Mississippi.

5. Francis M. Vaughan, IV, individually, is an adult resident citizen of Lowndes County, Mississippi.

II.

JURISDICTION

6. This Court has jurisdiction of this matter under 28 USC §§ 1332 and 1441 pursuant to complete diversity of citizenship between the plaintiff and all of the defendants in this case.

III.

INTERPLEADER

7. USAA issued an automobile insurance policy to Francis M. Vaughan, Jr., with coverage effective from October 25, 1983 to April 25, 1984. A copy of Policy Number 028 10 81U 7101 0 showing Mr. Francis M. Vaughan, Jr. as the named insured is attached as Exhibit "A" to this Complaint.

8. This automobile insurance policy issued by USAA covered two separate vehicles, a 1974 International Scout II and a 1983 Pontiac Grand Prix.

9. As shown on the policy declaration page under "Part C – Uninsured Motorists" the policy provided

limits bodily injury in the amount of $50,000 for each person suffering bodily injury and $100,000 for each accident.

* * *

EXHIBIT X

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEROY TUCK, Administrator of the Estate of JOHNNY L. TUCK, Deceased; LEROY TUCK, an individual and DOROTHY TUCK, an individual,	)	
Plaintiffs,	)	
vs.	)	No. 83-C-175-C
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Defendant.	)	

DEFENDANT USAA'S BRIEF IN SUPPORT OF RESPONSE MOTION FOR SANCTIONS AND CROSS-MOTION FOR SANCTION

COMES NOW the defendant, USAA, and submits the following brief in response to the plaintiffs' motion for sanctions, and in support of its cross-motion for sanctions.

Statement of facts

The "Introduction" to plaintiff's brief, equivalent to a "Statement of Facts" is simply a diatribe against USAA, based upon an incorrect perception of the facts, upon "20/20 hindsight", and upon conclusory allegations unsupported by *any* facts. The "Introduction" also completely ignores the responsibility of plaintiffs (through counsel, a duly licensed and practicing attorney who is *presumed* to know the law) to properly *plead* and *prove* subject matter jurisdiction in the action which they voluntarily filed in the federal court. Specifically, the plaintiffs' "Introduction" contains blatant misstatements of the status of the proceedings below. Contrary to the assertion in the brief, it was *never* contended nor proved that USAA *ever* denied the plaintiff's claim under the insurance policy. As was stated by Mr. Carr in a conference with the court at the outset of trial * * * : complaints in two unrelated cases filed in such far-flung jurisdictions as Pennsylvania and Alabama. The disposition of neither of these cases is revealed to the court, and if neither were dismissed before final judgment, it is the fault of both plaintiff and defendants, as well as an oversight by the courts, which also have an obligation to inquire into their own jurisdiction.

It should be added here that *USAA v. Weuppa*, CV86AR5072NW, resulted in final judgment in November 1987 after an appeal to the Eleventh Circuit Court of Appeals on the merits. USAA won. After consulting with Attorney Carr, plaintiffs counsel has, in that case, filed a motion for relief from the judgment – something of which Attorney Carr fails to advise the court. *See* Exhibit "B"

attached hereto. Defendant USAA is prepared to controvert by affidavit of counsel or otherwise in that case, any allegation of misconduct on the part of USAA.

While bearing in mind that the plaintiff has the obligation to properly plead and prove that jurisdiction exists, the number of times that USAA has been sued in the Western District of Oklahoma, and the problems faced by counsel in attempting to obtain dismissals of those cases, even post-*Tuck*, may be revealing of the number of courts and counsel which are simply unaware, as were plaintiffs, of the nature of USAA and its jurisdictional ramifications. It is the practice of USAA's counsel in the Western District of Oklahoma to raise the questions of subject matter jurisdiction in each appropriate case filed against USAA in Federal Court. *See, Brooks v. USAA,* CIV-86-848-BT (W.D. Okla. 1986); *Choate v. USAA,* (W.D. Okla. 1985); *Miller v. USAA,* CIV-88-1236-P (W.D. Okla. 1988; *Caplinger v. Gates,*

* * *

EXHIBIT Y-1

05/21/84
DWE:mm

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Reciprocal Interinsurance Exchange,	)	
Plaintiff,	)	
v.	)	No. CIV-84 1275-E
SCOTT ROBELEN, an Individual,	)	
Defendant.	)	

COMPLAINT

(Filed illegible)

COMES NOW the plaintiff, United Services Automobile Association, and for its cause of action against the defendant, Scott Robelen, states:

I.

That the plaintiff, United Services Automobile Association, is a reciprocal interinsurance exchange organized and existing under the laws of the State of Texas, with its principal place of business in San Antonio, Texas; that the defendant, Scott Robelen, is a citizen of the State of Oklahoma residing in Norman, Oklahoma. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs. Jurisdiction is vested in this Court by reason of diversity of citizenship between the parties.

* * *

EXHIBIT Y-2

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

11/16/84
DWE:mm

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Reciprocal Interinsurance Exchange,	)	
Plaintiff,	)	
v.	)	No.
SCOTT ROBELEN, an Individual,	)	CIV-84 1275-E
Defendant.	)	

PRE-TRIAL CONFERENCE MEMORANDUM

(Filed Nov. 19, 1984)

Date of Conference: November 19, 1984, at 2:45 P.M.

Appearances: John C. Niemeyer and David W. Edmonds
NIEMEYER, EDMONDS, NOLAND, ALEXANDER & HARGRAVE
Three Hundred North Walker
Oklahoma City, OK 73102
(405) 232-2725

ATTORNEYS FOR PLAINTIFF, UNITED SERVICES AUTOMOBILE ASSOCIATION

Ben T. Lampkin
LAMPKIN, WOLFE,
McCAFFREY
& TAWWATER
Suite 245, Century Center
Oklahoma City, OK 73102
(405) 272-9611

ATTORNEYS FOR
DEFENDANT,
SCOTT ROBELEN

I. STIPULATIONS:

A. All parties are properly before the Court.

B. The Court has jurisdiction of the parties and the subject matter.

C. All parties have been correctly designated.

D. There is no question as to misjoinder or non-joinder of parties.

E. *Facts:*

1. Plaintiff is a reciprocal interinsurance exchange, organized and existing under the laws of the State of Texas.

2. The parties cannot stipulate as to the residency and citizenship of the defendant, Scott Robelen, with regard to a specific state; however, they can stipulate that he is not a resident or citizen of the State of Texas. Therefore, there is diversity of citizenship between the parties.

3. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

4. On September 3, 1983, at approximately 4:15 A.M., the defendant, Scott Robelen, was a

passenger in a vehicle driven by Jay Bass on Highway 88, 1.3 miles south of Stigler, Oklahoma. Said vehicle ran off the roadway, and turned over and skidded on its top.

* * *

EXHIBIT Y-3

09/14/84
DEW:MM

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED SERVICES AUTOMOBILE ASSOCIATION, a Reciprocal Interinsurance Exchange,	)	
Plaintiff,	)	
v.	)	No.
SCOTT ROBELEN, an Individual,	)	CIV-84 1275-E
Defendant.	)	

NOTICE OF CHANGE OF FIRM NAME

(Filed Sept. 14, 1984)

COMES NOW the plaintiff, United Services Automobile Association, and advises the Court, all counsel of record, and all other concern parties that the law firm of FOLIART, MILLS & NIEMEYER, which has heretofore been named as law firm of record, was dissolved on July 1, 1984. On the same date the new firm of NIEMEYER,

EDMONDS, NOLAND, ALEXANDER & HARGRAVE was formed consisting of the following attorneys:

John C. Niemeyer	Linda Alexander
David W. Edmonds	John R. Hargrave
Michael L. Noland	Greg D. Givens

One or more of the above-named attorneys has been principally involved in the handling of this litigation to date and will continue to do so in the future. Therefore, from this date forward all correspondence,

* * *

EXHIBIT Z-1

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF OKLAHOMA

SANDRA A. RUTH, surviving spouse of FRANCIS DEAN RUTH, Plaintiff,	)	
VS.	)	NO. CIV-85 913
UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	)	

COMPLAINT

(Filed Apr. 8, 1985)

COMES now the Plaintiff, Sandra A. Ruth, and for her causes of action against the Defendant, herein alleges and state:

JURISDICTION

I.

The Plaintiff, Sandra A. Ruth, is a citizen and resident of the State of Oklahoma; and, the Defendant, United Services Automobile Association, is a foreign corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal place of business in a state other than the State of Oklahoma, and is currently doing business in the State of Oklahoma. Sandra A. Ruth is the surviving spouse of Francis Dean Ruth. Further, the amount in controversy herein exceeds the sum of Ten Thousand and No/100 ($10,000.00) exclusive of interest and costs and this Court has jurisdiction pursuant to the provisions of 28 U.S.C. Section 1332.

* * *

EXHIBIT Z-2

GDG:mwc
5/8/85

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

SANDRA A. RUTH, surviving spouse of FRANCIS DEAN RUTH, Plaintiff,	)	
v.	)	Case No.
UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	)	CIV-85-913-T

ANSWER OF DEFENDANT, UNITED SERVICES AUTOMOBILE ASSOCIATION

(Filed May 10, 1985)

For answer to plaintiff's Complaint, defendant, United Services Automobile Association, alleges and states:

I

The defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations and claims contained in paragraphs I and II of plaintiff's Complaint and therefore denies the same.

II

The defendant is without knowledge or information sufficient to form a belief as to the truth of those allegations and claims contained in paragraph III of plaintiff's Complaint and therefore denies the same. The defendant admits that an accident occurred on the date and at the time mentioned in paragraph III of the Complaint and that one vehicle was being operated by Edsel Conrad Brumley while the other vehicle was operated by Francis Dean Ruth.

* * *

EXHIBIT Z-3

GDG:mwc
9/16/85

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

SANDRA A. RUTH, surviving spouse of FRANCIS DEAN RUTH, Plaintiff,	)	
v.	)	Case No.
UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	)	CIV-85-913-T

MOTION OF DEFENDANT, UNITED SERVICES AUTOMOBILE ASSOCIATION, TO DISMISS OR IN THE ALTERNATIVE FOR A CHANGE OF VENUE

(Filed illegible)

COMES NOW the defendant, United Services Automobile Association, pursuant to Rule 19 of the Federal Rules of Civil Procedure and respectfully moves the Court to dismiss the plaintiff's Complaint on the grounds that an indispensable party has not and cannot be joined in the present action. In the alternative, said defendant respectfully moves pursuant to Title 28 U.S.C.A. § 1404 for a change of venue to the district or division where plaintiff's cause of action might have been brought.

Respectfully submitted,

By /s/ Greg D. Givens
David W. Edmonds and
Greg D. Givens
of

NIEMEYER, EDMONDS,
NOLAND, ALEXANDER
& HARGRAVE
Three Hundred North Walker
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-2725

ATTORNEYS FOR SAID DEFENDANT

EXHIBIT Z-4

WLN:ef
3/25/86

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

SANDRA A. RUTH, surviving spouse of FRANCIS DEAN RUTH, Plaintiff,	)	
v.	)	Case No.
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	CIV-85-913-T
Defendant.	)	

MOTION TO DISMISS

(Filed March 31, 1986)

COMES NOW the defendant, United Services Automobile Association, pursuant to F.R.C.P. 12 (b) (l) and 28 U.S.C. 1332 (C) moves the Court dismiss this action on grounds that this Court lacks jurisdiction. In support of this Motion, defendant states the following:

This Complaint was filed in Federal Court on the grounds of diversity of citizenship. The defendant, United Services Automobile Association, is not a corporation, but is a reciprocal insurance exchange whose membership consists of members in many states. It is an unincorporated association. A substantial number of the members of the defendant, United Services Automobile Association, are citizens of, and domiciled in, the State of Oklahoma. The plaintiff, Sandra A. Ruth, is a member of such association, and is a citizen and resident of the State of Oklahoma. The requisite diversity of citizenship between plaintiff and defendant does not exist. Therefore this Court is without jurisdiction.

* * *

EXHIBIT AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LEROY TUCK, Administrator of the Estate of JOHNNY L. TUCK, Deceased; LEROY TUCK, an individual and DOROTHY TUCK, an individual,	) Case NO. 85-2770) (Appealed from the) U.S. District Court of) Oklahoma/Northern,) Case No. 83-C-175-C)
Appellees,	
vs.	
UNITED SERVICES AUTOMOBILE ASSOCIATION, a corporation,	
Appellant.	

APPELLANT'S BRIEF IN REPLY TO APPELLEES' "PRELIMINARY RESPONSE"

NIEMEYER, NOLAND & ALEXANDER

Linda G. Alexander – OBA No. 000195
Three Hundred North Walker
Oklahoma City, Oklahoma 73102
Telephone: (405) 232-2725

ATTORNEYS FOR THE APPELLANT.

October, 1986

STATEMENT OF FACTS

Plaintiffs brought this action in the United States District Court for the Northern District of Oklahoma. The allegations against United Services Automobile Association (USAA) contained in plaintiffs' Complaint include an allegation that USAA breached its contract of uninsured motorist coverage and exercised bad faith in refusing to settle the claim. The "uninsured" or "underinsured" motorist involved in the accident was an Oklahoma resident, whose joinder would have destroyed diversity. He was not sued.

The plaintiffs' jurisdictional allegation against the defendant United Services Automobile Association was only that the defendant was a "foreign corporation".

Defendant's trial counsel filed an Answer failing to deny the jurisdictional allegations. The issue of the trial court's subject matter jurisdiction was never raised at the trial level. There is a total lack of evidence of any attempt by United Services Automobile Association, at trial,

before trial or otherwise, to conceal its citizenship and status as an unincorporated association.

Separate counsel was retained by the defendant United Services Automobile Association for the purpose of prosecuting this appeal. Good practice required a complete review of the action, including the issue of subject matter jurisdiction. This review called United Services Automobile Association's attention to the jurisdictional defect. Had USAA not raised the issue here, of course it would have been the appellate court's duty to examine the jurisdictional issues, to determine both its jurisdiction and the jurisdiction of the district court.

EXHIBIT BB

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IVA JEAN HOLCOMB and CURTIS HOLCOMB, Husband and Wife,	)	
Plaintiffs,	)	
vs.	)	Civil Action
DONALD DAVIS and JACKIE DAVIS, Husband and Wife; and UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	85-C-652-E
Defendants.	)	

PLAINTIFF'S ORIGINAL COMPLAINT

(Filed July 11, 1986)

COME NOW the Plaintiffs, and for support of their complaint allege and state as follows:

I

That the Plaintiffs are residents of the State of Oklahoma, living in Tulsa, Oklahoma, and the Defendants Donald and Jackie Davis are residents of the State of Texas, living in Grand Prairie, Texas; and the Defendant United Services Automobile Association is an insurance corporation incorporated under the laws of and having its principal place of business in, the State of Texas, and diversity of citizenship exists between the parties. Further, that the amount in controversy herein exceeds Ten Thousand and No/100 Dollars ($10,000.00), exclusive of costs and interest. That this is a cause of action arising from the tortious conduct of the Defendants and the tortious acts occurred in Dallas County, Texas. This court is vested with jurisdiction and venue to adjudicate the matters involved in this action under the provisions of 28 U.S.C. §§1332.

FIRST CAUSE OF ACTION

COMES NOW the Plaintiff, Iva Jean Holcomb, and in support of her first cause of action against Defendants Donald and Jackie Davis, alleges and states as follows:

I

That Defendant, Donald Davis, is and was at all times material hereto the owner of the Chrysler automobile his wife and co-defendant, Jackie Davis, was operating at the time of the accident hereinafter set forth and policy holder of the insurer and co-defendant, United Services Automobile Association.

II

That on April 30, 1982, the Plaintiff, Iva Jean Holcomb, was a passenger in the Chrysler automobile owned by Donald Davis and being operated by Jackie Davis. Defendant, Jackie Davis, attempted to make a left turn from a side street onto the Northwest Freeway (near Love Field) in Dallas County, Texas, when she caused said automobile to become trapped crossways in the oncoming lane of traffic. An approaching station wagon hit the automobile driven by Defendant, Jackie Davis, broadside, striking

* * *

EXHIBIT CC-1

IN THE UNITED STATES
DISTRICT COURT IN AND FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	
Plaintiff,	)	
vs.	)	
JEFFERY SANDHOLM, FRANK A. SANDHOLM, and BETTY L. DOWLAND, now DOUGLAS,	)	
Defendants.	)	CASE NO. 85-C-112 B

COMPLAINT

(Filed Febr. 7, 1985)

Comes now the plaintiff, United Services Automobile Association, a Texas corporation, and for its cause of action against the defendants, alleges and states as follows:

I.

That United Services Automobile Association is a Texas corporation, licensed as an insurance corporation, with its principal place of business in San Antonio, Texas. That it is licensed to do business in the State of Oklahoma. That the defendants, Jeffery Sandholm, Frank Sandholm, and Betty L. Dowland, now Douglas, are individuals who are residents of the State of Oklahoma. That this Court has jurisdiction of the parties hereto, and the action herein pursuant to 28 U.S.C., section 1332, there

being complete diversity of citizenship between the plaintiff and all the defendants herein. That the amount in controversy exceeds $10,000.00. That this is an action for declaratory judgment filed pursuant to 28 U.S.C., section 2201.

II.

That United Services Automobile Association issued its policy of insurance, policy 013 25 044 7101 2 to the defendant, Frank A. Sandholm, said policy of insurance being effective from March 11, 1983 to September 11, 1983, said policy of insurance providing liability insurance coverage on a 1976 Dodge pickup owned by Frank A. Sandholm. A copy of said policy of insurance is attached hereto as Exhibit "A", and incorporated herein as if the same were fully set forth herein.

III.

That allegedly as a result of negligence on the part of one Jeffery Sandholm, while driving the said 1976 Dodge pickup owned by Frank Sandholm, an accident occurred on or about the 11th day of March, 1983, and as a result thereof, a lawsuit has been filed in the District Court in and for Creek County, Drumright Division, State of Oklahoma, styled Betty L. Dowland, now Douglas, plaintiff, vs. Jeffery Sandholm and Frank Sandholm, defendants, case number C-84-73-D. Said lawsuit alleges that Jeffery Sandholm was driving the 1976 Dodge pickup, owned by

Frank Sandholm, at the time of said accident. A copy of said Petition filed in

* * *

EXHIBIT CC-2

Easy Reading HOMEOWNERS POLICY

Quick Reference

DECLARATIONS PAGE

Your Name
Location of Your Residence
Policy Period
Coverages
Amounts of Insurance
Deductible

Beginning On Page

1 AGREEMENT

1 DEFINITIONS

SECTION I – YOUR PROPERTY

2 COVERAGES

Property Coverages
Loss of Use
Additional Coverages
Debris Removal
Trees, Shrubs and Plants
Credit Card

4 PERILS INSURED AGAINST

6 EXCLUSIONS

6 CONDITIONS

Insurable Interest
Duties After Loss
Loss Settlement
Mortgage Clause

SECTION II – YOUR LIABILITY

9 COVERAGES

Personal Liability
Medical Payments to Others

9 EXCLUSIONS

10 ADDITIONAL COVERAGES

Claim Expenses
First Aid Expenses
Damage to Property Of Others

11 CONDITIONS

Limit of Liability
Duties After Loss

SECTION I and SECTION II

12 CONDITIONS

Policy Period
Cancellation
Non-Renewal

STATE EXCEPTIONS

PLEASE NOTE: THERE ARE MASSACHUSETTS AMENDTORY [SIC] ENDORSEMENT(S).

THIS IS A NEW EASY TO READ POLICY. PLEASE READ YOUR POLICY. THERE ARE SOME COVERAGE

CHANGES. IF THERE ARE ANY QUESTIONS, CALL YOUR AGENT OR COMPANY RIGHT AWAY.

Part One

This Policy is incomplete unless it is issued with a Declarations Page. "PART TWO" and endorsements, if any.

POLICY SUMMARY

READ YOUR POLICY CAREFULLY

This is a legal contract between you, the policyholder and us, your insurer. And like other contracts, it contains duties and responsibilities.

This policy insures your home and other structures located on and appertaining to your residence premises. In addition, this policy gives you coverage for your personal property and provides financial protection when you are held liable for damage to the property of others or for injury to others – both on and off your property. These coverages are subject, however, to those limitations and restrictions specifically identified and further explained where necessary. The causes of loss or damage to your personal property which this policy insures against are also specifically identified and further explained where necessary.

There is an index to help you readily locate that portion of the policy dealing with any questions you may have.

We have tried to make this policy easy to read and understand. But should you need clarification on some point, we will be glad to provide it.

PROVISIONS APPLICABLE TO

United Services Automobile Association
(A Reciprocal Interinsurance Exchange)

A non-assessable policy

- Reciprocals
- Special definitions and provisions
- Plan of operation

In your policy these sets of words have the same meaning: Policy means Contract, You, Your or Insured means Subscriber. We, us, our, USAA or Company means Reciprocal or Interinsurance Exchange; Premium means Deposit; President means Attorney-in-Fact.

Your policy is issued as part of an Interinsurance Exchange by the President of USAA as Attorney-in-Fact under the authority given him by the subscribers.

No Contingent Liability: You are liable only for the amount of your premium since USAA has a free surplus in excess of the amount required by Article 19.03 of the Texas Insurance Code of 1951, as amended.

Participation: By purchasing this policy, you are a member of USAA and subject to its bylaws. You are entitled to dividends as may be declared by us, after

approval as required by the Texas Insurance Code of 1951, as amended.

Witness Whereof, we have caused this policy to be signed by our president and secretary at San Antonio, Texas.

/s/ illegible
president

/s/ illegible
secretary

EXHIBIT GG

STATE OF OKLAHOMA)
)
COUNTY OF TULSA)

AFFIDAVIT OF ATTORNEY

I, E. Terrill Corley, of lawful age being first duly sworn, depose and state as follows:

1. I was attorney of record for the defendant, Betty L. Dowland, now Douglas, in the case of *United Services Automobile Association v. Jeffery Sandholm, Frank A. Sandholm, and Betty L. Dowland, now Douglas,* case no. 85-C-112-B, filed on February 17, 1985, in the United States District Court for the Northern District of Oklahoma.

2. The basis of the trial court's jurisdiction was diversity of citizenship. The nature of the action was suit for declaratory judgment.

3. At no time during the course of the proceedings did the plaintiff, United Services Automobile Association, allege that it was an unincorporated association or

attempt to dismiss the action for lack of jurisdiction over the subject matter in the absence of complete diversity.

4. Summary judgment was granted in favor of the plaintiff on December 31, 1985.

Further affiant sayeth not.

/s/ E. Terrill Corley
E. Terrill Corley

Subscribed and sworn to before me this 21st day of Nov. 1989.

/s/ Carolyn N. Baird
Notary Public

My Commission Expires: 3-7-93

EXHIBIT DD

AFFIDAVIT

STATE OF TEXAS :

COUNTY OF BEXAR :

Before me, the undersigned authority, on this day personally appeared JOHN L. SWYERS, known to me, and being first duly sworn, desposes [sic] and states the following, to wit:

I am JOHN L. SWYERS, of lawful age, residing in the State of Texas. I am employed by United Services Automobile Association as Vice President-Associate General Counsel/Assistant Secretary.

In the above-stated capacity, I affirm that United Services Automobile Association (USAA) is a reciprocal interinsurance exchange, domiciled in Texas, and licensed under chapter 19 of the Texas Insurance Code. USAA is licensed to do business as a property/casualty insurer in all fifty states, as well as certain foreign locations, and has over 1.2 million policyholders.

As a reciprocal, USAA is owned by its policyholders who, through their premiums, contribute the necessary capital. Profits are returned to the policyholders through policy dividends and allocations to Subscriber's Savings Accounts (said allocated funds are paid to the policyholder whenever he or she terminates all policies). Operationally, USAA can be said to function much like a mutual insurer.

USAA is managed by a Board of Directors, elected by the policyholders at an annual meeting. Operational management is by a President, who is also the Attorney-in-Fact, and several Vice Presidents. The Association's headquarters are located in San Antonio, Texas in its own building which houses approximately 5800 employees. Approximately 800 employees are located in field service offices in several other states.

USAA is the parent company in an insurance holding company system regulated under Article 21.49-1 of the Texas Insurance Code. USAA owns all the stock of several subsidiary Texas insurance and financial service corporations.

Attached hereto are copies of Chapter 19 and Article 21.49-1 of the Texas Insurance Code. Also attached is a

pamphlet entitled "USAA Bylaws" which I certify to be a true and correct copy of the Association's current Bylaws.

The undersigned is competent to make this Affidavit and understands it will be used as evidence in the case of HENRY A. PRIDGEN, As Next Friend for HENRY A. PRIDGEN, III, A Minor vs. U.S.A.A.; U. S. District Court No. 84-247-ALB-AMER, Middle District of Georgia.

/s/ John L. Swyers
JOHN L. SWYERS

Subscribed and sworn to before me this 27th day of November 1984.

/s/ Loretta C. Lanicek
LORETTA C. LANICEK
Notary Public
Bexar County, Texas

My commission expires 11/30/88

EXHIBIT EE

AFFIDAVIT

STATE OF TEXAS

COUNTY OF BEXAR

Before me, the undersigned official, on this day appeared John L. Swyers, who is personally known to me, and first being duly sworn according to law upon his oath deposed and said:

My name is John L. Swyers, I am over 18 years of age. I have never been convicted of a crime, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct.

I am Vice President, General Counsel of United Services Automobile Association (USAA). Among my duties is to assure that policies of insurance issued by USAA comply with statutory requirements of all fifty (50) states.

Each USAA member is required to sign a Subscriber's Agreement and Power of Attorney which adopts by reference the Bylaws of the Exchange. While these Bylaws allow issuance of either assessable or nonassessable policies, it is the business practice of USAA to issue only nonassessable policies to our members in all fifty (50) states. Such insurance contracts are in compliance with statutory requirements in each state in that regard.

Further affiant sayeth naught.

/s/ John L. Swyers
John L. Swyers

Subscribed and sworn to before me on the 19th day of September, 1989 to certify which witness my hand and official seal.

/s/ Loretta C. Lanicek
Notary Public in and
for the State of Texas
My Commission expires 11/30/92

SEAL

EXHIBIT FF

COPY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

RAY HOLIDAY and SANDRA HOLIDAY, husband and wife, and the marital community comprised thereof, Plaintiffs, vs. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	NO. C87-1281 AFFIDAVIT OF John L. Swyers, IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION (Filed Nov. 10, 1987)

STATE OF Texas)
) ss.
COUNTY OF Bexar)

John L. Swyers, begin first duly sworn on oath, deposes and says:

1. My position with United States Automobile Association ("USAA") is that of VP, Gen. Counsel. I am over the age of twenty-one and competent to testify as to the following facts.

(Illegible) USAA is a reciprocal interinsurance exchange. It issued to the plaintiffs a homeowner's policy 25592 62-92a. Under provisions of the policy issued by USAA, by purchasing the policy, an insured becomes a member of the reciprocal interinsurance exchange which

USAA comprises and is subject to its bylaws. Attached as Exhibit 1 is a section of the policy specifically setting forth these terms.

3. USAA is an unincorporated association. In addition to Mr. Holiday, it has numerous members who have been issued homeowner's policies in the State of Washington which are currently in effect.

/s/ John L. Swyers
VP Assoc. Gen. Counsel
Insurance

STATE OF Texas

COUNTY OF Bexar

SIGNED AND SWORN to (or affirmed) before me on October 29, 1987 by John L. Swyers

/s/ Loretta C. Lanicek
Notary Public
My appointment expires
11/30/88

[Pages A-366 - A-369 intentionally left blank in printing]

EXHIBIT GG

NO. 87-12328

KATHLEEN ST. JOHN, ET AL Plaintiffs/Counter-Defendants VS. USAA CASUALTY INSURANCE COMPANY Defendant/ Counter-Plaintiff	*	IN THE DISTRICT COURT 134TH JUDICIAL DISTRICT DALLAS COUNTY, TEXAS

THE ORAL DEPOSITION OF
ROBERT A. WHEELESS

JUNE 6, 1989

DUPLICATE

BRUCE SLAVIN
CERTIFIED SHORTHAND REPORTER

___ Cost Due From Plaintiffs
Reference No.: 891740BS

ROBERT A. WHEELESS,

the Witness, having been first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows:

DIRECT EXAMINATION

By Mr. St. John:

Q Will you please state your name?

A Robert A. Wheeless. Last name is W-h-e-e-l-e-s-s.

Q Mr. Wheeless, you are now employed by USAA. Is that right?

A Correct.

Q How long have you been employed by USAA?

A October, 1974.

Q Are you now – Tell me what your job description is now – your job title.

A I'm vice-president of claims systems.

Q And what are your duties as vice-president of claim systems?

A I provide – I create, develop and maintain systems support for the P&C claims operation at USAA.

Q And "P&C" would be "property and casualty"?

A "Property and casualty."

Q Approximately how many people report directly to you?

A Directly to me?

* * *

[p. 43] retrieve, litigation cases being handled by USAA?

A Not that I know of. In claims we carry a – one indicator that says a file is in suit. "Suits pending" is what it's called. That is the only indicator in the entire claims system that there's any litigation.

Q Is that fielded information?

A Uh-huh.

Q If you wanted to, could you run out a list of every case that's now pending?

A Yes.

Q Could you restrict such a case to cases pending now in a particular state?

A Yes; current state. It's the way claims systems carries it, by current state.

Q I meant state of the Union.

A Yes. No. What I meant by that statement was some people have base-state information and other people have current-state – occurrence – where the occurrence appeared. And that's the way claims works. Wherever the accident or the loss occurred that's the state which we carry in the claims system. And on that basis, if you wanted to know the suits pending by a current state, I have that information.

[p. 44] Q. Okay.

A It's fielded.

Q So, that wouldn't tell me where the suit was pending, but where the loss occurred?

A Right. I guess by reading the file you could obtain the rest of it.

Q Do you know whether or not anyone within the legal department has authorization to access all or part of the property in claims systems?

A No.

Q You don't know?

A I do know. That's contained in security tables, and someone would have to look at those and see who's authorized what. I don't know.

Q Have you ever had any experiences at USAA that indicated to you that one of the in-house attorneys had access to your system, personally – in other words, did not have to request that information of someone working in property claims?

A I do not know that there are attorneys that are working in the claims department that are claims litigators that have access to the claims system.

Q I want to make sure I'm not missing a step.

A Okay.

Q Is it true, then, that any one of those attorneys

* * *

EXHIBIT HH

BEST'S

KEY RATING GUIDE

PROPERTY CASUALTY

1991 Edition

A_M BEST

The Insurance Information Source™

BEST'S

KEY RATING GUIDE
PROPERTY-CASUALTY

1991 Edition
Published continuously since 1906
A_M BEST
The Insurance Information Source™
A.M. BEST COMPANY
Oldwick, New Jersey 08858 •
(908) 439-2200 • Fax: (908) 439-3363

BEST'S KEY RATING GUIDE – PROPERTY CASUALTY EDITION
ANNUAL STATEMENT DATA FOR YEARS 1986 – 1990

Company Name (Group Affiliation) Principal Officer Mailing Address Began Bus. Structure * Specialty Phone # AMB # * #	Year	Balance Sheet: Cash & Short-Term Invest. (%)	Stocks and Bonds (%)	All Other Assets (%)	Total Admitted Assets ($000)	Loss Reserves (%)	Unearned Prem. (%)	All Other Liab. (%)	Total Liabilities ($000)	Policyholders Surplus ($000)	Operations: Direct Premiums Written ($000)	Net Premiums Written ($000)	Business Net Retention (%)	Net Underwriting Income ($000)	Net Investment Income ($000)	Net Operating Income Before Tax ($000)	Net Income ($000)	Change Policyholders Surplus ($000)
UNITED	'86	23.8	70.4	5.8	277,162	66.6	25.1	8.3	193,866	83,296	424,771	121,478	22.2	-23,727	18,648	1,079	-1,887	25,458
PACIFIC	'87	4.2	83.3	12.5	327,316	62.5	23.4	14.1	211,580	115,736	390,534	120,252	23.5	-2,081	23,060	20,990	14,836	*
INSURANCE	'88	2.5	88.9	8.6	400,992	63.1	26.3	10.7	225,103	175,889	357,135	133,538	27.2	-11,208	22,782	11,574	10,770	*
CO.	'89	8.6	93.2	6.2	519,380	66.8	21.2	12.1	253,331	265,970	294,745	136,831	31.7	-10,705	30,328	20,123	18,043	*
(Reference Insurance Group) Dean W. Case, President & CEO 4 Penn Center Plaza Philadelphia, PA 19103 1928 Stock Agency Personal Auto, Commercial Lines 206-952-5000 02537 24473	'90	1.3	93.9	4.3	550,558	72.6	21.6	5.7	250,845	299,712	269,849	140,244	34.2	-11,420	29,201	17,782	-4,172	*

*Illegible

UNITED PACIFIC INS CO OF NY (* Insurance Group) Dean W. Case, President & COO 4 Penn Center Plaza Philadelphia, PA 19103 1978 Stock Agency Personal Auto. Commercial Lines 215-864-4000 03798 36471	'86	16.5	71.7	11.8	58,397	72.5	20.2	7.3	44,416	13,981	13,971	27,211	66.1	-7,106	4,263	-2,843	-2,611	*
	'87	4.7	88.5	6.7	60,207	73.0	18.5	8.5	44,298	15,909	13,501	24,064	64.1	761	5,055	5,817	3,345	1,327
	'88	6.1	89.3	4.6	65,147	78.3	19.6	2.1	47,828	17,319	14,581	27,689	65.5	-5,263	5,238	-25	-113	1,410
	'89	0.0	92.7	7.3	69,573	74.8	22.0	1.2	50,620	18,953	13,730	25,030	64.6	-970	6,838	5,868	2,487	1.6
	'90	0.0	94.2	5.8	68,588	78.0	15.2	6.8	52,645	15,943	15,944	21,066	56.9	-4,393	5,250	857	-2,798	-1.0
UNITED REINS CORP OF NY (Reinsurance Corp of NY Group) Robert M. *, President 80 Madison Lane New York, NY 10038 1977 Stock Agency Reinsurance Ocean Marine 212-363-4440 03728 34908	'86	14.7	77.7	7.6	30,116	58.3	31.7	10.0	14,831	15,285	2,437	16,034	75.0	15	1,400	1,415	1,852	2.0
	'87	7.9	85.7	6.4	39,353	69.5	25.4	5.1	15,733	23,620	3,080	13,548	68.2	2,287	1,838	4,126	3,271	8.3
	'88	6.8	88.3	5.0	64,837	72.2	21.0	6.8	17,936	26,901	3,841	13,210	71.2	773	2,417	3,190	2,686	1,281
	'89	8.9	86.3	4.8	49,548	69.6	18.0	12.5	19,971	29,577	4,911	11,755	62.9	-1,434	2,925	1,490	3,125	2,676
	'90	7.8	87.9	4.3	48,943	73.0	14.2	12.8	20,414	28,529	5,867	10,014	58.8	-1,669	2,921	1,252	1,454	-*

*Illegible

UNITED	'86	11.0	78.3	10.7	26,032	31.0	63.7	5.3	1,257	24,775	...	1,465	100.0	-523	858	335	693	24,775
REPUBLIC	'87	20.6	73.9	5.5	36,218	50.1	48.8	1.1	9,580	26,639	...	13,866	97.4	-1,568	2,249	681	1,455	1.*
REINSURANCE	'88	29.4	66.5	4.1	46,126	69.6	29.2	1.2	15,546	30,580	...	17,365	99.2	540	3,204	3,745	3,640	1.*
CO	'89	41.0	49.3	9.7	57,053	55.8	39.6	4.5	26,969	30,083	...	20,912	99.8	-3,284	4,169	885	218	*
(Lawrence Insur-	'90	56.6	28.4	15.0	76,742	65.7	18.4	15.9	46,185	30,558	...	39,165	81.3	830	4,914	5,795	1,570	474
ance Group)																		
A. Wayne Peter-																		
son, Chm &																		
President																		
5718 Westerner,																		
Suite 1310																		
Houston, TX																		
77057																		
1986 Stock																		
Broker																		
Reinsurance																		
713-975-6810																		
00545 29220																		
*																		
UNITED SECU-	'86	83.2	14.7	2.1	1,052	13.6	76.7	9.8	799	253	1,725	1,294	75.0	-47	59	12	12	*
RITY ASSUR	'87	79.3	17.9	2.8	1,538	27.2	64.4	8.4	1,224	313	2,257	1,748	7.74	-14	81	67	67	*
CO OF PA	'88	85.1	12.5	2.3	2,399	25.6	66.1	8.3	1,761	638	3,243	2,321	71.6	1	138	139	79	*
(No Group Affil-	'89	91.0	8.2	0.8	3,557	31.7	55.8	12.5	2,744	813	4,258	3,218	75.6	33	241	274	188	*
iation)	'90	71.6	26.3	2.1	4,123	37.1	57.1	5.8	3,252	871	5,281	4,187	79.3	31	323	354	59	*
Ronald A.																		
Landers, Presi-																		
dent																		
P.O. Box 99																		
Southern, PA																		
18964-9972																		
1982 Stock																		
Agency																		
Individual Acci-																		
dent & Health																		
215-723-3044																		
01850 42129																		
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*Illegible

UNITED SECURITY INS CO (USUCO Corporation Group) Charles R. Floy, President P.O Box 1848 Des Mones, IA 50306-1848 1946 Stock Agency Personal Lines, Commercial Lines 515-222-4000 00932 21776	'86	11.8	73.1	15.0	37,244	59.7	33.6	6.7	26,652	10,591	29,339	28,212	95.6	-281	2,733	2,451	4,295	*
	'87	7.8	76.7	15.5	37,546	58.8	32.9	8.3	28,545	9,001	31,010	29,776	96.3	-3,887	2,559	-1,328	-1,233	-1*
	'88	8.0	78.7	13.3	42,865	57.0	35.8	7.2	31,944	10,920	30,445	30,744	43.5	131	2,778	2,909	2,554	1,919
	'89	4.6	81.1	14.3	45,772	57.1	35.9	7.0	34,648	11,124	29,097	31,817	52.0	-808	3,134	2,325	1,519	*
	'90	73	778	14.9	48,966	55.0	37.1	7.9	39,051	9.915	29,478	34,924	53.9	-2,540	3,130	589	679	-1*
UNITED SERVICES AUTO ASSN (USAA Group) Robert F. McDermont, President 9800 Fredericksburg Road, USAA Building San Antonio, TX 78288 1922 Reco Direct Personal Auto, Homeowners 512-498-2211 00934 25941	'86	2.4	75.6	22.0	3,541,508	60.0	30.9	9.1	1,835,691	1,705,817	1,610,210	1,633,314	99.3	-83,692	171,854	88,162	183,971	218,411
	'87	0.9	77.4	21.7	4,090,069	59.9	29.1	11.0	2,196,795	1,893,274	1,868,812	1,395,950	99.3	-21,266	191,659	172,393	321,357	187,41*
	'88	0.2	77.2	22.6	4,651,842	61.9	28.0	10.1	2,412,557	2,239,286	2,018,006	2,059,691	99.3	-18,338	199,691	181,353	226,141	346,*
	'89	0.5	75.5	24.0	5,306,308	63.0	27.2	9.8	2,653,634	2,652,673	2,153,772	2,197,098	99.3	-73,074	214,415	141,340	211,884	413,387
	'90	0.7	75.0	24.4	5,650,683	63.2	26.8	10.0	2,910,822	2,739,861	2,339,952	2,380,783	99.2	-158,195	191,054	32,860	65,069	87,188

*Illegible

UNITED SOUTHERN ASSURANCE CO (No Group Affiliation) Richard P. Love, Jr., President P.O. Box 2648 Melbourne, FL 32902-2648 1958 Stock Agency Commercial Auto 407-984-2941 01974 23256	'86	16.2	67.6	16.2	9,924	14.5	16.9	68.7	2,755	7,170	1,897	1,713	90.3	-164	474	310	327	7,170
	'87	29.4	46.5	24.1	22,572	38.0	24.5	37.5	12,651	9,921	17,570	13,284	75.6	292	790	1,082	1,103	2,752
	'88	51.0	39.0	9.9	48,829	52.4	16.6	31.3	33,500	15,329	40,632	29,069	71.5	-1,950	1,984	35	3	*
	'89	25.6	62.9	11.5	75,674	58.2	12.7	29.1	59,188	16,486	70,768	44,625	63.1	-3,201	4,470	1,269	507	*
	'90	17.1	66.3	16.6	66,105	92.0	4.7	3.3	60,425	5,680	59,364	39,959	67.3	-8,276	5,172	-3,104	-3,230	-10,806

*Illegible

UNITED STATES FID & GUAR CO (United States Fidelity & Guaranty Group) Norman P. Blake, Jr., Chm & President P.O. Box 1138 Baltimore, MD 21203 1896 Stock Agency Automobile, Commercial Lines 301-547-3000 02539 25887	'86	10.9	69.3	19.9	7,025,483	65.1	23.7	11.3	5,785,578	1,239,905	2,727,471	3,562,035	88.0	-381,598	487,563	105,965	187,639	326,*
	'87	7.4	71.1	21.5	7,682,000	68.3	22.3	9.4	6,439,679	1,242,321	2,790,010	3,637,239	86.2	-180,132	394,015	213,883	275,208	2,416
	'88	5.5	72.2	22.4	8,503,778	67.7	19.3	13.0	7,108,662	1,395,116	2,816,478	3,509,655	77.7	-24,576	536,773	512,197	439,991	152,795
	'89	7.1	70.6	22.3	8,349,310	69.1	17.9	12.9	7,432,599	1,416,711	2,620,418	3,300,317	78.6	-363,511	454,947	91,435	282,342	21,34*
	'90	11.5	61.6	26.8	8,658,101	72.3	16.2	11.5	7,305,905	1,352,196	2,453,123	3,078,626	76.5	-461,082	456,958	-4,124	-50,680	-64*

*Ilegible

EXHIBIT 11

National Underwriter

PROFILES

1991

Property/Casualty Insurers

Financial And Underwriting Performance Results

National Underwriter

PROFILES

1991

Property/Casualty Insurers

Financial And Underwriting Performance Results

Successor To Argus Health Chart

David W. Doligalski, Editor

NATIONAL
UNDERWRITER
The National Underwriter Co./
505 Gest St./Cincinnati, OH 45203

UNITED SERVICES AUTOMOBILE ASSOCIATION, TX
USAA Group

Usaa Bldg
San Antonio, TX 78288
(512) 498-2211

Reciprocal Exchange. Organized 1922. Ratings: Demotech A; Moody's Ass.
Licensed in DC & All States; Also GU,PR,VI.

Year	Total Admitted Assets $000	Poli-cyholder Surplus $000	Change in Sur-plus %	Net Pre-mium Written $000	Change in NPW %	Net Income $000	NPW to Surplus *	Return on Sur-plus %	Pure Loss Ratio %	Loss Adj Expense Ratio %	Undwrtg Expense Ratio %	Com-bined Ratio %
1986	3,541,508	1,705,817	–	1,633,314	–	183,971	1.0	–	69.9	12.3	12.5	–
1987	4,090,069	1,893,274	11.0	1,895,950	16.1	321,357	1.0	18.8	62.6	11.3	11.8	100.7
1988	4,651,842	2,239,286	18.3	2,059,691	8.6	226,141	0.9	11.9	63.6	12.7	11.9	100.8
1989	5,306,308	2,652,673	18.5	2,197,098	6.7	211,884	0.8	9.5	66.7	14.3	11.8	103.1
1990	5,650,683	2,739,861	3.3	2,380,783	8.4	65,069	0.9	2.5	68.1	15.3	12.3	105.8

(Non-Investment Grade Bonds to Surplus: 4.3%; Real Estate to Surplus: 19.9%; Affil Investments to Surplus: 51.0%; AGent's Balances to Surplus: 11.8%)

1990 By-Line Experience	Direct Premium Written $000	Net Premium Written $000	Net Premium Earned $000	Pure Loss Ratio %
Auto Liability	987,625	1,010,350	989,646	75.8
Auto Physical Damage	736,761	753,295	742,247	58.2
Homeowners Multiple Peril	428,713	425,063	408,494	62.4
Fire and Allied	54,666	54,871	52,621	46.9
Other Liability (Non-Auto)	54,998	46,692	44,814	67.0
Inland Marine	42,838	42,392	40,402	47.7
Earthquake	20,924	20,759	18,115	71.5
Reinsurance	0	14,070	14,070	358.5
Ocean Marine, Aircraft	13,343	13,207	12,934	55.0
Workers' Compensation	70	70	69	5.3
Glass	14	14	14	0.0
Total All Lines	2,339,952	2,380,783	2,323,427	68.1

1990 By-State Experience (Top 20)	Direct Premium Written $000	Share of Total %	Direct Premium Earned $000	Pure Loss Ratio %
California	358,796	15.3	351,941	64.7
Texas	259,781	11.1	250,639	73.6
Florida	179,814	7.7	174,713	56.9
Virginia	158,765	6.8	154,532	61.8
New York	99,914	4.3	97,908	57.3
Georgia	85,235	3.6	83,722	58.0
Maryland	83,996	3.6	82,237	60.2
Pennsylvania	68,435	2.9	68,921	69.8
New Jersey	60,692	2.6	57,991	61.4
Washington	60,556	2.6	58,572	73.2
Colorado	60,061	2.6	58,696	95.9
North Carolina	53,091	2.3	51,521	62.9
Massachusetts	49,081	2.1	47,359	38.8
Connecticut	44,302	1.9	43,553	63.1
Arizona	44,134	1.9	42,591	63.7
Illinois	43,679	1.9	42,653	62.3
Ohio	40,821	1.7	39,909	57.8
Louisiana	40,352	1.7	39,265	68.7
Alabama	38,887	1.7	37,771	59.7
South Carolina	38,593	1.6	37,014	124.7

UNITED STATES FIDELITY & GUARANTY COMPANY, MD
US Fid & Gty Group

PO Box 1138
Baltimore, MD 21203
(301) 547-3000

Stock Company Incorporated 1896, Ratings: Moody's A1.
Lincensed in DC & All States: Also VI,CN.

Year	Total Admitted Assets $000	Policyholder Surplus $000	Change in Surplus %	Net Premium Written $000	Change in NPW %	Net Income $000	NPW to Surplus *	Return on Surplus %	Pure Loss Ratio %	Loss Adj Expense Ratio %	Undwrtg Expense Ratio %	Combined Ratio %
1986	7,025,483	1,239,905	–	3,562,035	–	187,639	2.9	–	70.3	10.2	28.4	–
1987	7,797,742	1,242,321	0.2	3,637,239	2.1	275,208	2.9	22.2	64.3	9.4	29.8	104.4
1988	8,503,778	1,395,116	12.3	3,509,655	-3.5	439,991	2.5	35.4	60.8	9.6	30.2	101.3
1989	8,849,310	1,416,711	1.5	3,300,317	-6.0	282,342	2.3	20.2	67.0	10.4	33.4	111.5
1990	8,658,101	1,352,196	-4.6	3,078,626	-6.7	-50,680	2.3	-3.6	69.4	12.3	34.1	116.3

(Non-Investment Grade Bonds to Surplus: 22.1%; Real Estate to Surplus: 48.1%; Affil Investments to Surplus: 44.1%; Agent's Balances to Surplus: 18.7%)

1990 By-Line Experience	Direct Premium Written $000	Net Premium Written $000	Net Premium Earned $000	Pure Loss Ratio %	1990 By-State Experience (Top 20)	Direct Premium Written $000	Share of Total %	Direct Premium Earned $000	Pure Loss Ratio %
Auto Liability	576,354	747,577	759,140	76.8	Massachusetts	222,933	9.1	234,168	85.1
Commercial Multiple Peril	516,512	694,916	718,155	53.4	Mississippi	143,726	5.9	152,176	63.9
Workers' Compensation	523,430	553,940	694,127	102.9	New York	128,580	5.2	134,308	76.2
Auto Physical Damage	236,377	341,738	355,783	49.4	Florida	111,447	4.5	126,412	65.0
Homeowners Multiple Peril	108,412	210,186	207,744	61.0	Pennsylvania	107,428	4.4	111,092	77.1
Other Liability (Non-Auto)	167,252	168,946	224,033	72.8	Texas	103,602	4.2	121,263	99.4
Fidelity, Surety, Fin Guar	115,455	113,800	114,622	19.6	Illinois	97,187	4.0	104,668	79.5
Fire and Allied	115,809	106,718	111,783	41.0	Virginia	90,758	3.7	100,036	73.8
Inland Marine	52,497	59,584	62,528	48.5	North Carolina	89,120	3.6	94,025	62.8
Reinsurance	0	33,403	32,926	104.8	California	88,394	3.6	107,332	41.9
Ocean Marine, Aircraft	24,840	19,096	26,129	58.7	Alabama	75,092	3.1	85,389	98.4
International	0	12,863	12,323	106.0	Indiana	74,193	3.0	77,031	55.6
Farmowners Multiple Peril	8,781	8,486	8,188	77.1	Tennessee	68,745	2.8	73,543	58.4
Earthquake	1,744	3,833	2,928	3.6	New Jersey	65,631	2.7	72,403	57.8
Burglary and Theft	1,457	1,580	1,703	11.7	South Carolina	64,629	2.6	66,232	58.5
Boiler and Machinery	3,544	1,334	1,174	60.9	Louisiana	61,953	2.5	65,943	56.0
Medical Malpractice	45	371	339	-61.7	Georgia	60,966	2.5	69,947	47.9
Glass	172	213	239	24.1	Oklahoma	60,317	2.5	66,988	69.4
Accident and Health	443	41	54	150.7	New Mexico	57,927	2.4	58,198	89.4
Total All Lines	2,453,123	3,078,626	3,333,919	69.5	Maryland	56,185	2.3	60,401	51.5

EXHIBIT JJ

CHRONOLOGY OF LITIGATION

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PROOF OF SERVICE

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On OCT. 15 1991, I served the foregoing document described as:

ADDENDUM IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR LEAVE TO AMEND AND REQUEST FOR SANCTIONS

on all interested parties in this action:

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thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

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thereof enclosed in sealed envelopes addressed as follows:

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AUTOMOBILE
ASSOCIATION

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/s/ Jo-Ann Shimizu
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LAUGHLIN E. WATERS AND VOULA D. WATERS, Plaintiffs, vs. UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendants.	CASE NO. 91 3615 WFN REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION; OPPOSITION TO REQUEST FOR SANCTIONS Date: November 8, 1991 Time: 8:30 a.m. Room: To be assigned Trial Date: March 3, 1992

COMES NOW defendant UNITED SERVICES AUTOMOBILE ASSOCIATION ("USAA") and submits its Reply Memorandum in Support of Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction; Opposition to Request for Sanctions as follows.

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I.

INTRODUCTION

USAA moved to dismiss this diversity action pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. In the motion, USAA pointed out that, since it was

an unincorporated association with members in every state, the requisite complete diversity was lacking. In response, plaintiffs LAUGHLIN E. WATERS and VOULA D. WATERS argue that the Court nonetheless should exercise subject matter jurisdiction and, indeed, that USAA should be sanctioned for seeking dismissal. Plaintiffs' contentions are without merit. The case law, including a 1990 United States Supreme Court decision, makes it clear beyond question that USAA's status eliminates subject matter jurisdiction. Plaintiffs' sanctions request similarly has no basis; plaintiffs are improperly seeking to sanction USAA not for conduct in this case, but for conduct in other cases. Accordingly, USAA's motion to dismiss should be granted and plaintiffs' request for sanctions should be denied.

II.

FOR PURPOSES OF FEDERAL DIVERSITY JURISDICTION, USAA MUST BE CONSIDERED TO BE A CITIZEN OF EVERY STATE IN WHICH IT HAS MEMBERS

In opposing USAA's motion to dismiss, plaintiffs argue that both the law and the evidence concerning USAA's jurisdictional status are "in conflict" (Mem. 23-25). Plaintiffs are wrong.

First, the controlling legal principles are now clearly established. Both the Supreme Court and Ninth Circuit have expressly held that, for diversity purposes, the citizenship of an unincorporated association is measured by the citizenship of the association's members.

The Supreme Court explicitly made this point just last year in *Carden v. Arkoma Assocs.*, 494 U.S. 185, 110

S.Ct. 1015 (1990), a case plaintiffs do not even cite. *Carden* involved a diversity suit by an Arizona limited partnership with limited partners that were citizens of Louisiana, the same state of citizenship as the defendant. *Id.* at 1016. In determining the proper status of the limited partnership for diversity purposes, the Court noted that "[t]he fifty States have created, and will continue to create, a wide assortment of artificial entities." *Id.* at 1022. To evaluate such an entity's status, "[t]he precise question posed under the terms of the diversity statute is whether [it] may be considered a 'citizen' of the State under whose laws it was created." *Id.* at 1017.

After reviewing the case law, the *Carden* court found that while corporations have been considered citizens of the state of their incorporation since at least 1844, the court has "firmly resisted extending that treatment to other entities." *Carden,* 110 S.Ct. at 1018. Thus, the *Carden* Court held that "to determine, for diversity purposes, the citizenship of an artificial entity, the court [must] consult the citizenship of . . . all of the entity's members." *Id.* at 1021. The Arizona limited partnership involved in *Carden* accordingly was deemed to be a citizen of Louisiana as well as Arizona, and complete diversity therefore was lacking. *Id.* at 1022; *see also United Steelworkers of America AFL-CIO v. R.H. Bouligny, Inc.*, 382 U.S. 145, 149-153, 86 S.Ct. 272, 15 L.Ed.2d 217 (1965), (noting that "unincorporated associations" are treated as citizens of every state in which they have members); 13B C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* (2d ed. 1984 & Supp. 1991) § 3630 (same).

Not surprisingly, the Ninth Circuit adopted the same jurisdictional analysis outlined in *Carden*. In *Rockwell*

Int'l. Credit Corp. v. United States Aircraft Ins. Group, 823 F.2d 302, 303-304 (9th Cir. 1987)[1], a "group of independent insurance companies" relied on diversity jurisdiction to remove a case to federal court. The Ninth Circuit raised the jurisdictional issue sua sponte and held that since the insurance companies were operating as "an unincorporated association," the case must be dismissed for lack of subject matter jurisdiction because "[a]ll members of an unincorporated association must be diverse from the opposing party." *Id.* at 304; *accord Faysound Ltd. v. United Coconut Chems., Inc.*, 878 F.2d 290, 292 (9th Cir. 1989) (citing *Rockwell*); *O'Halloran v. University of Wash.*, 856 F.2d 1375, 1381 (9th Cir. 1988) (citing *Rockwell*); *Otero v. International Union of Elec. Radio & Mach. Workers*, 474 F.2d 3 (9th Cir. 1973) (per curiam) (citing *Bouligny*).

Second, the *Carden* jurisdictional analysis plainly requires that USAA's citizenship be measured by the citizenship of all of its members. Indeed, two courts of appeals have reached precisely this conclusion. Specifically, in *Tuck v. USAA*, 859 F.2d 842, 844-845 (10th Cir. 1988), *cert. denied*, 489 U.S. 1080 (1989), the Tenth Circuit expressly examined USAA's citizenship for diversity purposes and decided that "USAA's status under Texas law" was that of an unincorporated association. The *Tuck* court therefore held that USAA was properly considered a citizen of every state in which it has members, and that, since some USAA members and the *Tuck* plaintiffs were citizens of the same state, the requisite complete diversity

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[1] *Rockwell* was subsequently overruled in other part on other grounds by *Partington v. Gedan*, 923 F.2d 686 (9th Cir. 1991) (per curiam).

was lacking.[2] Similarly, in *Baer v. USAA*, 503 F.2d 393 (2d Cir. 1974), the Second Circuit reviewed the Texas statutes "under which [USAA] was organized and exists," and concluded that it must "regard [USAA] as an unincorporated association." *Id.* at 395. Since, here again, USAA had members who were citizens of the same state as the plaintiff, the Second Circuit held that the action should be dismissed for lack of subject matter jurisdiction. While the Ninth Circuit has not had occasion to address the precise question of USAA's jurisdictional status, it is noteworthy that in *Rockwell*, the court expressly adopted *Baer's* statement of the general rule that "[a]ll members of an unincorporated association must be diverse from the opposing party." *Rockwell*, 823 F.2d at 304 (citing *Baer*, 503 F.2d at 395).

In the face of these authorities, plaintiffs offer (Mem. 23) only *USAA v. Glen Falls Ins. Co.*, 429 F.Supp. 101 (D. Conn. 1976), as evidence of the legal "conflict" they claim exists. But in *Glen Falls*, the court simply recited, without any jurisdictional analysis, that USAA "is a Texas corporation." *Id.* at 105. More fundamentally, *Glen Falls* predates *Carden* by fourteen years and, accordingly, plainly offers plaintiffs no support. Thus, plaintiffs have cited no real authority, let alone any post-*Carden* or post-*Tuck*

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[2] Plaintiffs complain (Mem. 3) that USAA's reliance on *Tuck* is "ironic" because USAA petitioned for a writ of certiorari to review the Tenth Circuit's decision; however, plaintiffs neglect to mention that in that petition, USAA did not challenge the Tenth Circuit's analysis of its jurisdictional status – an analysis which, after all, USAA had specifically urged the *Tuck* court to adopt.

authority, that creates any "conflict" as to USAA's jurisdictional status.

Plaintiffs also advance (Mem. 23-24) the notion that USAA functions as a "corporate creature" and thus should be considered a corporation for jurisdictional purposes. In making this "corporate creature" argument, plaintiffs point (Mem. 24) only to a 1939 decision of the California court of appeal, *Mitchell v. Pacific Greyhound Lines*, 33 Cal.App.2d 53, 91 P.2d 176 (1939), and to provisions of California's *Insurance Code*. These authorities, of course, say nothing about USAA's status under Texas law, nor do they even begin to refute the *Baer* and *Tuck* courts' analysis of that status. Moreover, these authorities have nothing to do with the issue of diversity jurisdiction. By their own terms, they merely establish that "a reciprocal exchange is to be treated as an entity" (*Mitchell*, 33 Cal.App.2d at 63-64) – a proposition that is legally irrelevant. As the Ninth Circuit held in *Fifty Assocs. v. Prudential Ins. Co.*, 446 F.2d 1187, 1190 (9th Cir. 1970), the fact that an unincorporated association is considered an entity under state law does not affect its jurisdictional status; "[t]he citizenship of each member" still must be analyzed. *Accord, Bouligny*, 382 U.S. at 149-150 (noting that "many voluntary associations . . . are indistinguishable from corporations" but affirming nonetheless the jurisdictional distinction between the two); *see also* 13B C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 3630 (2d ed. 1984 & Supp. 1991).

Finally, left without any genuine basis to oppose USAA's motion to dismiss in this case, plaintiffs devote the bulk of their memorandum to an attempt to manufacture authority by pointing to USAA's pleadings in other

cases (Mem. 5-22).[3] Specifically, in a small number of pre-*Carden* cases, counsel representing USAA made incorrect assertions about USAA's jurisdictional status, most typically describing USAA as a Texas corporation. As explained below, however, USAA has instituted strict controls to attempt to eliminate such errors in the future. But while these errors are regrettable, they have no impact on the issue of law now before this Court; the fact that USAA took erroneous positions in other cases provides no basis to ignore binding Supreme Court precedent by determining USAA's citizenship by reference to anything other than "the citizenship of 'all the members.' [Citations omitted.]" *Carden*, 110 S.Ct. at 1021. Here, it is uncontroverted that USAA has members who are domiciled in California. See Affidavit of Thomas J. Corridan (over 180,000 members in California). Since plaintiffs also are citizens of California, this action must be dismissed. *See Carden*, 110 S.Ct. at 1021; *Rockwell*, 823 F.2d at 304 (citing *Baer*, 503 F.2d at 395).

III.

PLAINTIFFS' ATTEMPT TO SEEK SANCTIONS IN THIS CASE FOR CONDUCT IN OTHER CASES IS UNFOUNDED

In addition to using USAA's pleadings in other cases to support an argument in favor of jurisdiction here,

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[3] Plaintiffs thus appear to be suggesting some sort of jurisdiction by estoppel. Any such suggestion, however, cannot be reconciled with "the traditional rule that the parties cannot by consent, waiver or estoppel obtain federal subject matter jurisdiction." *Sullivan v. First Affiliated Securities, Inc.*, 813 F.2d 1368, 1374 (9th Cir. 1987), *cert. denied*, 484 U.S. 850 (1987).

plaintiffs claim that the actions in these other cases reflect a deliberate strategy by USAA to deceive the federal courts and thus serve as a basis to impose over $1 million in sanctions. Plaintiffs' position is utterly devoid of legal or factual support.

First, USAA's conduct in this case has been entirely proper. The complaint in this action was filed on July 5, 1991. Since *Carden* and *Tuck* had recently made it clear that USAA's jurisdictional status destroyed complete diversity and thus eliminated subject matter jurisdiction, USAA promptly responded with its motion to dismiss – the only pleading USAA has filed in this action – on July 29, 1991. As part of its submission, USAA provided the Court with a legal discussion of the most relevant authorities (*i.e., Tuck*) and an affidavit verifying its status as an unincorporated association with over 180,000 members in California. Thus, USAA has done precisely what the Tenth Circuit in *Tuck* instructed it to do: "[M]ake . . . motions [to dismiss] in all pending diversity litigation." *Tuck,* 859 F.2d at 845 n.3. By adhering to the legal standards announced by the Supreme Court in *Carden* and by following the express direction of the Tenth Circuit in *Tuck,* USAA obviously has not done anything here even arguably improper, let alone warranting Rule 11 sanctions.

Second, it is well established that actions in other cases cannot serve as a basis for sanctions in this case. The ABA's formal standards on Rule 11 expressly provide that "[a] court may not impose Rule 11 sanctions for transgressions which occurred before another court or in another action." ABA, *Standards and Guidelines for Practice Under Rule 11 of the Federal Rules of Civil Procedure* (1988)

121 F.R.D. 101, 111, ("Standards"). Indeed, the very treatise on which plaintiffs place heavy reliance (Mem. 26-27) recognizes that:

> "Rule 11 does not contemplate a district court's imposition of sanctions in one case for the violative signing of a pleading . . . in another case or before another court." G. Joseph, *Sanctions: The Federal Law of Litigation Abuse* (1989) § 5(d)(2)(c), at 71-72.

The Ninth Circuit has adopted this principle, reversing a district court's decision to sanction counsel for frivolous arguments made in state court papers that were "never filed . . . in the federal action." *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1185 (9th Cir. 1988); *accord Burull v. First Nat'l. Bank of Minneapolis*, 831 F.2d 788, 790 (8th Cir. 1987), *cert. denied*, 485 U.S. 961 (1988). Thus, plaintiffs' only possible claim – i.e., that USAA's actions in other cases warrants sanctions here – fails as a matter of law.

Third, plaintiffs' sanctions argument not only lacks any legal basis, it distorts the factual record. USAA's conduct in the other cases cited by plaintiffs did not then, and does not now, warrant sanctions. The compilation of cases presented by plaintiffs as evidence of USAA's alleged "strategy" to deceive the federal courts is derived entirely from the *Tuck* litigation in the Tenth Circuit. The *Tuck* court was presented with the identical list of cases that plaintiffs now offer to this Court. See Declaration of Patrick E. Carr In Support of Request for Sanctions and in Opposition to Motion to Dismiss of Defendant USAA, para. 3. Although plaintiffs apparently are in close contact with counsel for the plaintiffs in *Tuck* – having

obtained his declaration – they have neglected to inform the Court that USAA presented a special report to the Tenth Circuit addressing those prior cases. The report both explained the prior cases in which USAA regrettably appeared as an entity in federal diversity actions, and detailed the measures undertaken by USAA to insure that it will not be a party in federal court actions based on diversity jurisdiction. For the Court's information a copy of that report to the Tenth Circuit is attached as Exhibit "A" to the Declaration of Timothy B. Dyk.[4]

As the report notes, USAA's litigation docket of approximately 15,500 active cases is handled on a highly decentralized basis. Most litigation is conducted through regional offices in Sacramento, California; Colorado Springs, Colorado; Tampa, Florida; Norfolk, Virginia; Reston, Virginia; and Seattle, Washington. Each office has various personnel, ranging from in-house claims counsel to claims management personnel who are not attorneys, who supervise lawsuits handled by USAA's staff counsel and by USAA's approximately 3,200 outside counsel. Unfortunately, given this geographical and organizational spread of litigation responsibility and the large number of cases involved, USAA erroneously took the position in a relatively small number of cases that it could appropriately participate as a party in federal diversity actions.

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[4] After the report was filed, the Tenth Circuit granted a joint motion to dismiss the appeal in light or the parties' settlement, and remanded the case to the district court with instructions to "dismiss pending motions and proceedings as moot."

As the report details, USAA has gone to great lengths to ensure that the problems identified in *Tuck* will not recur. For example, in the short time since the *Carden* decision, USAA has: sent an internal memorandum to all senior claims attorneys, claims attorneys, supervisors of litigation, regional claims management, and casualty file handlers reminding them that "USAA should appear neither as a plaintiff nor defendant in federal court when diversity is the jurisdictional basis"; sent a memorandum from its General Counsel to all of its approximately 3,200 outside counsel advising them that "[u]nder no circumstances should any case involving USAA be commenced in, defended in, or removed to federal court on the basis of diversity jurisdiction"; added a special notice to its new case file forms specifying that "USAA, a reciprocal interinsurance exchange, as an entity, is not subject to federal diversity jurisdiction in any of the federal districts"; and finally, updated its internal docketing procedures and investigated available computer software to enable it to better track all pending court cases.

USAA believes that these steps, and the others identified in the report, will correct the problem reflected in the list of cases presented in *Tuck* by preventing USAA's future participation as a party in federal diversity actions. The absence of any new cases from the list submitted by plaintiffs, and indeed, the prompt and entirely proper manner in which USAA has moved to dismiss this case, suggest that these measures are working effectively.

IV.

CONCLUSION

For the foregoing reasons, USAA's motion to dismiss for lack of subject matter jurisdiction should be granted, and plaintiff's request for sanctions should be denied.

DATED: October 25, 1991

Respectfully submitted,

DANIELS, BARATTA & FINE

By Paul R. Fine
Paul R. Fine
Attorneys for Defendant
UNITED SERVICES
AUTOMOBILE
ASSOCIATION

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 1801 Century Park East, Ninth Floor, Los Angeles, California 90067.

On October 28, 1991, I served the foregoing document described as **REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS COMPLAINT FOR**

LACK OF SUBJECT MATTER JURISDICTION; OPPOSITION TO REQUEST FOR SANCTIONS on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

William M. Shernoff
Shernoff, Bidart & Darras
600 South Indian Hill Blvd.
Claremont, CA 91711-5498

I deposited such envelope(s) in the mail at Los Angeles California. The envelope was mailed with postage thereon fully prepaid.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on October 28, 1991, at Los Angeles, California.

/s/ Shirley Kadomoto
Shirley Kadomoto

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE WILLIAM F. NIELSEN,
DISTRICT JUDGE PRESIDING
(VISITING FROM THE
EASTERN DISTRICT OF WASHINGTON)

LAUGHLIN E. WATERS, ET AL.,	)	
PLAINTIFFS,	)	
VS.	)	NO. CV
UNITED SERVICES AUTOMOBILE ASSOCIATION,	)	91-3615-WFN (GHKX)
DEFENDANT	)	

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

FRIDAY, NOVEMBER 8, 1991

SUSAN A. LEE, CSR 2800, CM, RPR
OFFICIAL COURT REPORTER
435 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012
(213) 626-6353

APPEARANCES:

FOR THE PLAINTIFFS:

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FOR THE DEFENDANT:

DANIELS, BARATT & FINE
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LOS ANGELES, CALIFORNIA 90067
(213) 556-7900

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TRANSCRIPT OF PROCEEDINGS OF FRIDAY, NOVEMBER 8, 1991

HEARING: DEFENDANT'S MOTION TO DISMISS

[p. 4] LOS ANGELES + CALIFORNIA, FRIDAY, NOVEMBER 8, 1991

+ 8:30 A.M.

THE COURT: BE SEATED.

THE CLERK: CASE NUMBER CV 91-3615-WFN(GHKX), LAUGHLIN E. WATERS, ET. AL., VERSUS UNITED SERVICES AUTOMOBILE ASSOCIATION.

COUNSEL, PLEASE STATE YOUR APPEARANCES.

MR. FINE: PAUL FINE FOR DEFENDANT UNITED STATES (AS STATED) SERVICES AUTOMOBILE ASSOCIATION.

THE COURT: GOOD MORNING, MR. FINE.

MR. SHERNOFF: BILL SHERNOFF FOR PLAINTIFF WATERS.

MR. DARRAS: GOOD MORNING, YOUR HONOR. FRANK DARRAS, D A R R A S, FOR THE PLAINTIFFS, THE WATERS.

THE COURT: WE'RE HERE ON DEFENDANT'S MOTION TO DISMISS AND PLAINTIFFS' MOTION FOR SANCTIONS.

AND I WAS ASKED IF I HAVE A TENTATIVE RULING, AND I DON'T. IT'S NOT MY HABIT TO DO THAT. I HAVE SOME THOUGHTS THAT I'M WILLING TO SHARE OR SOME QUESTIONS I GUESS I HAVE IN MY MIND; BUT I'LL DO THAT MAYBE AS THE ARGUMENTS PROCEED.

I THINK, MR. FINE, YOU'D LIKE TO START.

MR. FINE: YES, YOUR HONOR, IF I MIGHT.

I WILL BE BRIEF AT THIS TIME, YOUR HONOR, BECAUSE I THINK THE MATTER IS RATHER SIMPLE AND STRAIGHTFOWARD [sic].

U.S.A.A. IS A RECIPROCAL INSURANCE COMPANY. THEIR STATUS OR THEIR RIGHT TO USE THE FEDERAL COURTS HAS BEEN [p. 5] DETERMINED ON TWO OCCASIONS BY THE 2ND CIRCUIT AND THE 10TH CIRCUIT. AND SUBSEQUENT TO THAT – I'M REFERRING NOW TO THE *BAER* AND THE *TUCK* DECISIONS, AND THOSE CASES INVOLVE U.S.A.A., THE SAME ENTITY THAT'S BEFORE YOUR HONOR TODAY.

THOSE CASES, I THINK, ARE DISPOSITIVE OF THE MOTION AND GIVE THIS COURT NO ALTERNATIVE BUT TO DISMISS. BUT IF THAT WERE NOT ENOUGH, THE UNITED STATES SUPREME COURT,

SUBSEQUENT TO THE *TUCK* AND *BAER* DECISIONS, HAS ISSUED ITS OPINION IN THE *CARDEN* CASE, AGAIN HOLDING THAT IN DIVERSITY ACTIONS THERE MUST BE COMPLETE DIVERSITY OF ALL PARTIES.

THE COURT: *CARDEN* INVOLVED A LIMITED PARTNERSHIP, DID IT NOT?

MR. FINE: IT DID, YOUR HONOR.

THE COURT: AND HERE WE HAVE AN UNINCORPORATED ASSOCIATION OF HUNDREDS OF THOUSANDS OF INDIVIDUALS.

MR. FINE: OVER 186,000 MEMBERS.

THE COURT: IN CALIFORNIA.

MR. FINE: IN CALIFORNIA ALONE, YOUR HONOR.

THE COURT: WOULD THERE BE A DISTINCTION BETWEEN *CARDEN* AND *TUCK* – LET ME ASK IT THIS WAY: COULD *TUCK* HAVE COME DOWN THE WAY IT DID POST-*CARDEN*? IN OTHER WORDS, COULD THEY HAVE MADE THAT A CLASS ACTION? COULD WE DO THAT IN THIS CASE, ELIMINATING THE NONDIVERSE MEMBERS OF THE ASSOCIATION?

MR. FINE: I DON'T THINK YOU CAN, YOUR HONOR. THAT HASN'T BEEN REQUESTED AND IT'S NOT REALLY BEFORE THE COURT AT [p. 6] THIS TIME, BUT U.S.A.A. –

THE COURT: WELL, THE COURT COULD GRANT LEAVE TO AMEND AND STRUCTURE AN

AMENDED COMPLAINT OF THE SAME FORM AND TYPE THAT THE DISTRICT COURT IN KENTUCKY DID ON THE ORDER OF THE 10TH CIRCUIT, COULD IT NOT?

MR. FINE: YOUR HONOR, IF YOU LOOK AT THE *TUCK* DECISION, THE 10TH CIRCUIT WAS VERY CAREFUL ABOUT WHAT THEY WERE SUGGESTING. I MEAN, THEY DID IN FACT MAKE THE SUGGESTION YOUR HONOR IS MAKING; BUT IN THE FOOTNOTES THEY EXPRESSLY STATED – NOT EVEN IN THE FOOTNOTES, IN THE BODY OF THE OPINION AS WELL, THEY STATED THAT THAT MODE OF DEALING WAS FRAUGHT WITH PERIL, AND THEY DIDN'T EVEN SAY AT THIS POINT THEY REACHED A CONCLUSION AS TO WHETHER OR NOT PLAINTIFFS COULD HAVE SURVIVED IN A CLASS ACTION FORM.

I THINK WHAT'S INTERESTING, BETWEEN *TUCK* AND THIS CASE ANYWAY, YOU KNOW, *TUCK* WENT TO A VERDICT; AND AFTER THAT WAS THE FIRST TIME THAT THE DIVERSITY ISSUE WAS RAISED.

THE COURT: DOES THAT REALLY MAKE A DIFFERENCE?

MR. FINE: I THINK IT SHOULD, YOUR HONOR, WHEN WE GET TO THE NEXT POINT, WHICH IS THE SANCTION ISSUE. I DON'T THINK IT MATTERS, NO, BECAUSE, I THINK JURISDICTION IS AN ISSUE FROM DAY 1, IT NEVER GOES AWAY, IT CAN NEVER BE WAIVED; AND NO MATTER WHAT IS DONE HERE, THE 9TH CIRCUIT MUST TAKE IT AND REMAND IT BACK DOWN.

THE COURT: YES. REALLY, MY QUESTION IS: I THINK I [p. 7] UNDERSTAND THE *CARDEN* CASE, WHICH OF COURSE IS WRITTEN BY JUSTICE SCALIA AND CAME DOWN IN 1990. BUT IT DOES INVOLVE A LIMITED PARTNERSHIP. I ASSUME THERE AREN'T VERY MANY LIMITED PARTNERS AND THERE'S ONE GENERAL.

MR. FINE: THAT IS CORRECT.

THE COURT: AND I UNDERSTAND THE RULING INDICATES THAT IN A CASE INVOLVING A LIMITED PARTNERSHIP, YOU HAVE TO INCLUDE ALL OF THE PARTNERS, LIMITED OR GENERAL.

AND MY QUESTION REALLY IS WHETHER OR NOT THERE'S A DISTINCTION BETWEEN THAT RULING AND A CASE SUCH AS *TUCK* AND THIS CASE, WHERE WE DON'T HAVE A LIMITED PARTNERSHIP; WE HAVE THIS UNINCORPORATED ASSOCIATION WITH THESE HUNDREDS OF THOUSANDS OF MEMBERS THAT COULD BE NAMED DEFENDANTS IN A CLASS ACTION SIMILAR TO THE *TUCK* CASE.

YOU CAN EITHER HAVE IT, AS I SEE IT, A CLASS ACTION NAMING AS DEFENDANTS ALL OF THE U.S.A.A. MEMBERS; AND, AS I UNDERSTAND IT UNDER RULE 23, YOU CAN IGNORE DIVERSITY THAT WAY AND JUST HAVE THE REPRESENTATIVE PARTY BEING THE NONRESIDENT, OR AS *TUCK* DID, EXCLUDE THOSE AS MEMBERS OF THE CLASS THAT ARE NONDIVERSE.

MR. FINE: I THINK THERE ARE PROHIBITIONS AGAINST DOING THAT IN THE FORM OF THE

INSURANCE CODE, WHICH DOES NOT ALLOW DIRECT ACTIONS AGAINST THE MEMBERS UNTIL AFTER THE ENTITY ITSELF HAS BEEN SUED. THAT'S JUST ONE HURDLE THAT'D HAVE TO BE FACED.

[p. 8] THE COURT: IS THAT UNDER CALIFORNIA LAW?

MR. FINE: YES, CALIFORNIA INSURANCE CODE. AND I BELIEVE THAT TEXAS IS SIMILAR, BUT I WON'T MAKE THAT REPRESENTATION TO THE COURT.

BUT I THINK THAT THE ANSWER TO YOUR QUESTION ABOUT *CARDEN*, IS ANSWERED AS FOLLOWS: *CARDEN* WAS A LIMITED PARTNERSHIP SITUATION, AND THE COURT SAID EVERYBODY HAS TO BE DIVERSE.

THE 9TH CIRCUIT RULED IN A CASE IN 1987, *ROCKWELL INTERNATIONAL CREDIT CORPORATION*, AND THAT WAS A LABOR UNION, THAT WHERE EVERY MEMBER WAS SITUATED HAD TO BE LOOKED AT IN TERMS OF DIVERSITY. SO THAT'S THE 9TH CIRCUIT. THAT'S CITED IN OUR PAPERS, AS WELL.

THE COURT: I'VE LOOKED AT IT.

MR. FINE: AND IF THE *CARDEN* CASE ISN'T ENOUGH, THE U.S. SUPREME COURT RULED IN *UNITED STATES STEEL WORKERS OF AMERICA, A.F.L.-C.I.O., VERSUS* – I'M NOT GOING TO PRONOUNCE THIS CORRECTLY – *BOULIGNY*, A 1965 DECISION, THAT UNINCORPORATED ASSOCIATIONS ARE TRUSTED AS CITIZENS IN EVERY STATE IN WHICH THEY HAVE MEMBERS.

AGAIN, IT SEEMS TO ME CONCLUSIVE THAT THAT'S EXACTLY WHAT WE HAVE HERE AND THAT THE COURT MUST DISMISS THIS CASE.

WITH RESPECT TO THE SANCTION ISSUE –

THE COURT: BEFORE WE LEAVE THAT, IN THE U.S. SUPREME COURT CASE OF *NEWMAN-GREEN* – THAT'S A 1989 CASE, I RECOGNIZE; [p. 9] IN OTHER WORDS, THE YEAR BEFORE *CARDEN*, BUT THAT CASE IN A FOOTNOTE SEEMS TO APPROVE THE PROCEDURE FOLLOWED BY *TUCK* WHEN IT REFERRED TO *JASSER* (PHONETIC) *VERSUS NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION*, WHICH HANDLED THE MATTER JUST IN EXACTLY THE SAME WAY THAT *TUCK* DID. I DON'T THINK *CARDEN* MENTIONS THIS *NEWMAN-GREEN, INC.* –

MR. FINE: I DON'T THINK IT DOES.

THE COURT: – BUT BY INCLUDING IT, INCLUDING THE REFERENCE TO *JASSER* AS IT DID, IT'S ALMOST – WELL, TO ME IT INDICATES AN APPROVAL OF THE METHOD; AND I WONDER IF YOU HAVE ANY OBSERVATIONS ON T (ILLEGIBLE)

MR. FINE: YOUR HONOR, IF YOU WILL DEFER THAT TILL YOU HEAR FROM THE COUNSEL, I WILL RAISE THAT ISSUE. I HAVE SOME NOTES THAT I WILL REFER TO AND WILL ADDRESS FOR YOU.

THE COURT: ALL RIGHT.

MR. FINE: BUT I WOULD THIS FIRST TIME AROUND ALSO LIKE TO ADDRESS THE SANCTION ISSUE.

THE COURT: CERTAINLY.

MR. FINE: RULE 11 IS VERY SPECIFIC IN WHAT IT CALLS FOR. IT CALLS FOR COUNSEL WHO SIGNED THE DOCUMENT TO SIGN THAT DOCUMENT AFTER INVESTIGATING THE FACTS, INVESTIGATING THE LAW, AND SIGNING THE DOCUMENT SO AS NOT TO IMPOSE DELAY, ET CETERA, IN THE LITIGATION.

WHAT HAS BEEN DONE IN THIS CASE IS VERY STRAIGHTFORWARD. THE WATERS FILED THE COMPLAINT. PARAGRAPH 2 [p. 10] OF THEIR COMPLAINT ALLEGES THAT:

"DEFENDANT UNITED STATES SERVICES AUTOMOBILE ASSOCIATION IS AND AT ALL TIMES HEREIN MENTIONED WAS A DOMESTIC RECIPROCAL INSURANCE COMPANY WITH ITS PRINCIPAL PLACE OF BUSINESS IN THE STATE OF TEXAS."

I MIGHT ADD, BY THE WAY, THAT THAT'S NEVER – THAT'S NOT AN ISSUE IN THIS CASE. EVERYBODY, THE WATERS AGREE, U.S.A.A. AGREE: THEY ARE RECIPROCAL.

PARAGRAPH 3 OF PLAINTIFFS' COMPLAINT ATTEMPTS TO IMPOSE ORIGINAL JURISDICTION PURSUANT TO 28 U.S.C. 1332.

THE FIRST THING THAT U.S.A.A. DID IN THIS ACTION WAS TO FILE A MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION. THAT MOTION IS PRECISELY THE CONDUCT THAT THE *TUCK* COURT DIRECTED U.S.A.A. TO FOLLOW IN ALL LITIGATION. HOW, FOLLOWING THE 10TH CIRCUIT'S

DIRECTIVE IN A POST-*BAER*, POST-*TUCK*, POST-*CARDEN* SITUATION CAN VIOLATE RULE 11 IS BEYOND ME.

IT IS ALSO CLEAR, IN THE 9TH CIRCUIT, THAT SIGNING PLEADINGS OR PAPERS IN OTHER LITIGATION IS NOT TO BE USED IN TERMS OF IMPOSING SANCTIONS UNDER RULE 11 IN THIS LITIGATION.

THE COURT: SO IF U.S.A.A. DOES THINGS RIGHT IN THIS CASE, EVEN THOUGH THEY'VE TAKEN CONTRARY POSITIONS DOZENS OF TIMES IN, YOU MIGHT SAY, DISREGARD FOR ETHICS ACROSS THE COUNTRY IN THE FEDERAL SYSTEM, WE HAVE TO IGNORE THAT.

MR. FINE: I THINK UNDER RULE 11, YOU DO, YOUR HONOR. [p. 11] I'M NOT ADMITTING BY MY RESPONSE THAT THAT'S HAPPENED.

BUT I DO WANT TO POINT OUT TO THE COURT THAT THE OPPOSITION AND THE MOTION FOR SANCTIONS IN THIS CASE IS ESSENTIALLY THE EXACT MOTION THAT WAS MADE IN *TUCK*. AND *TUCK* WAS A CASE THAT HAD GONE THROUGH VERDICT BEFORE THE ISSUE OF SUBJECT MATTER JURISDICTION WAS RAISED.

CLEARLY, THE 10TH CIRCUIT OR THE TRIAL COURT IN *TUCK* HAD EVERY REASON TO BE UPSET WITH U.S.A.A. THAT'S NOT THE CASE HERE. AND AS THE REPORT THAT WE SUBMITTED, THAT WAS ALSO FILED IN THE 10TH CIRCUIT, SHOWS, U.S.A.A. HAS GONE TO GREAT EXTREMES, IF YOU WILL, TO

CLEAN UP THEIR ACT. IF THERE WAS ANY CRITICISM AS TO THEIR CONDUCT PRE-*TUCK*, POST-*TUCK* THEY'VE DONE A LOT TO REMEDY THE PROBLEMS.

AND IT IS, I THINK, INHERENTLY UNFAIR TO TELL U.S.A.A., WHEN THEY GET SUED IN THE FEDERAL COURT AND THEY SEEK TO FOLLOW THE 10TH CIRCUIT'S DIRECTIVE AND DISMISS, THAT THEY'RE ESSENTIALLY DAMNED IF THEY DO AND DAMNED IF THEY DON'T.

IF WE DIDN'T CHALLENGE THE COURT'S JURISDICTION AND WE WAITED AND A VERDICT CAME DOWN AND IT WAS APPEALED TO THE 9TH CIRCUIT AND THE 9TH CIRCUIT SUA SPONTE, AS WAS DONE IN *BAER*, REVIEWED THE ISSUE AND DETERMINED THAT THERE WAS NO DIVERSITY, NO SUBJECT MATTER JURISDICTION, AND THREW THE CASE OUT, MR. SHERNOFF WOULD BE YELLING AND SCREAMING APPROPRIATELY. BUT THAT ISN'T THE SITUATION HERE.

SO FOR THOSE REASONS, I THINK THAT SANCTIONS ARE AGAIN [p. 12] TOTALLY INAPPROPRIATE IN THIS CASE; AND I THINK FOR THE REASONS STATED, THE CASE MUST BE DISMISSED.

AND I WILL ADDRESS THE CLASS ACTION ISSUE IN A MINUTE.

THE COURT: THANK YOU, MR. FINE.

MR. SHERNOFF, PLEASE.

MR. SHERNOFF: THANK YOU. YOUR HONOR, FIRST I'M GOING TO ADDRESS THE JURISDICTIONAL ISSUE AND THEN MOVE ON TO THE SANCTIONS ISSUE.

I BELIEVE THAT THERE ARE TWO WAYS THAT THE COURT COULD HOLD FOR JURISDICTION OF THIS CASE. THE FIRST WAY IS – AND THIS IS SOMETHING THAT I THINK COUNSEL ESCAPES – IS THE FACT THAT A RECIPROCAL EXCHANGE, WHICH WE ALL AGREE THIS IS, IS A DIFFERENT ANIMAL THAN THE TRADITIONAL UNINCORPORATED ASSOCIATION.

AND THAT'S WHY WE DIDN'T CITE *CARDEN* OR ANY OTHER VOLUNTARY ASSOCIATION OR LIMITED PARTNERSHIP, BECAUSE A RECIPROCAL EXCHANGE, A RECIPROCAL INTERINSURANCE EXCHANGE, IS DIFFERENT. IT IS A CREATURE OF STATUTE.

AND I'D LIKE TO CITE TO THE COURT – I JUST WAS ABLE TO FIND THIS CASE RECENTLY. IT'S A STATE OF MISSOURI CASE, AND IT'S THE FIRST ONE THAT I'VE BEEN ABLE TO FIND WHICH ACTUALLY ANALYZES IN LENGTH: WHAT IS THIS ANIMAL CALLED RECIPROCAL INSURANCE EXCHANGE? AND THAT CASE IS *STATE OF MISSOURI EX REL. AUTO CLUB*, WHICH WAS ALSO A RECIPROCAL INSURANCE EXCHANGE; AND THAT'S FOUND AT 263 SOUTHWEST 2ND 68 (SIC). AND [p. 13] BASICALLY –

THE COURT: WHAT YEAR WAS THAT CITED, MR. SHERNOFF? IS THAT A RECENT CASE? I'M NOT

FAMILIAR WITH – THAT'S ALL RIGHT, IF YOU DON'T HAVE IT.

MR. SHERNOFF: 1982.

THAT COURT BASICALLY HELD THAT THE RECIPROCAL IN AN INSURANCE EXCHANGE IS RECOGNIZED AS A JURAL PERSON AND IS SUABLE AS AN ENTITY. IN OTHER WORDS, THEY WENT THROUGH THE WHOLE ANALYSIS OF THE RECIPROCAL EXCHANGE AND HOW IT'S FORMED AND WHY IT'S DIFFERENT. AND OF COURSE IT'S DIFFERENT, BECAUSE IT'S ALLOWED TO BE FORMED BY THE STATE STATUTE, AND THEY HAVE TO APPOINT AN ATTORNEY OF FACT TO BE SERVED FOR PROCESS.

AND I COULD ACTUALLY BURDEN THE RECORD HERE, BUT I DON'T WANT TO. I'M JUST GOING READ MAYBE A PASSAGE OR TWO FROM IT TO GIVE THE COURT A FLAVOR. BUT THIS DECISION SAYS:

> "ALTHOUGH AN EXCHANGE IS TECHNICALLY AN UNINCORPORATED ASSOCIATION, SIMPLY BECAUSE IT IS NOT A CORPORATION AS SUCH, THE STATUTES GOVERNING THE OPERATION OF THE EXCHANGE ARE RELATED – DEMONSTRATE THE LEGISLATIVE PURPOSE OF BOTH REQUIRING THE EXCHANGE TO BE A – TIGHTLY STRUCTURED IN A SPECIFIC MANNER."

AND THEY GO THROUGH THE WHOLE ANALYSIS OF WHY A RECIPROCAL EXCHANGE IS AN ENTITY AND SHOULD BE TREATED DIFFERENTLY THAN A GARDEN VARIETY ASSOCIATION.

[p. 14] AND THIS IS A POINT THAT MY WORTHY COUNSEL HERE MISSES. THIS IS WHAT THEY NEVER BROUGHT TO THE ATTENTION OF THE *TUCK* COURT. THEY NEVER TOLD THE *TUCK* COURT ABOUT WHY A RECIPROCAL EXCHANGE IS DIFFERENT; IT'S JUST NOT A GARDEN VARIETY VOLUNTARY ASSOCIAT. [sic]

NOW, THEY DID IN *PRIDGEN*, AS WE POINTED OUT IN OUR BRIEF, WHEN THEY WANTED TO BE IN FEDERAL COURT, WHEN THEY REMOVED FROM STATE COURT TO FEDERAL COURT. THEY WENT TO GREAT LENGTHS IN *PRIDGEN*. AND I THINK I'LL JUST REFER THE COURT TO PARTS OF OUR BRIEF.

THE COURT: YES. I READ THAT, BUT I DIDN'T GET THE SIGNIFICANCE OF IT. WHAT PAGE WAS *PRIDGEN* REFERENCED?

MR. SHERNOFF: *PRIDGEN* WAS ON PAGE 11 OF OUR BRIEF. IT WAS A GEORGIA C (illegible)

THEY REMOVED THAT CASE FROM STATE COURT TO FEDERAL COURT BECAUSE THEY WANTED TO BE IN FEDERAL COURT.

IN *PRIDGEN*, THEY WENT ON AND TOLD THE *PRIDGEN* COURT THAT UNDER TEXAS LAWS EXCHANGES ARE SIMILAR, IF NOT IDENTICAL, TO CORPORATIONS. THEY EVEN CITED THE TEXAS STATUTES, THEY CITED TEXAS CASES, AND THEY SAID BASICALLY THAT, "WE ARE A CORPORATION FOR DIVERSITY PURPOSES."

THEY WERE SO CONVINCING THAT THE FEDERAL COURT REMOVED IT, THE STATE AND FEDERAL COURT. AND THEY GOT THE ADVANTAGE OF THE FEDERAL COURT DECISION.

SO AS I HAVE INDICATED IN MY BRIEF – AND I DON'T WANT [p. 15] TO BELABOR THIS POINT – I BELIEVE, YOUR HONOR, FOR THE FIRST TIME, BECAUSE OF THE FACT THAT WE MAY HAVE ERRONEOUS CASES ON THE BOOKS – WE CERTAINLY HAVE LITIGANTS WHO HAVE BEEN DEPRIVED, OR FRAUDULENTLY DEPRIVED, I MIGHT ADD, OF THEIR RIGHTS – THAT THIS COURT FOR THE FIRST TIME SHOULD ENTERTAIN THE IDEA OF HOLDING AN EVIDENTIARY HEARING, AND LET'S HAVE SOME EVIDENCE ON JUST WHAT THIS RECIPROCAL EXCHANGE IS, FOR THE PURPOSES OF JURISDICTION; AND LET'S DECIDE THIS ISSUE INTELLIGENTLY AND ONCE AND FOR ALL AND STOP THIS CHARADE THAT'S BEEN GOING ON BY THESE PEOPLE IN THE FEDERAL COURTS.

AND THAT'S THE POINT COUNSEL MISSES. HE DOESN'T BRING THAT TO THE ATTENTION OF THIS COURT, AGAIN, IN HIS PAPERS. HE JUST CITES *TUCK* AND DISMISSES HIS CASE.

WHY DIDN'T HE CITE ALL THE AUTHORITY THEY CITED IN *PRIDGEN*? BECAUSE IT SUITED HIS PURPOSES NOT TO DO SO.

FURTHERMORE, AS THE COURT HAS POINTED OUT, APPROPRIATELY, THERE IS ANOTHER ALTERNATIVE METHOD – AND WE HAVE CITED THAT ALTERNATIVE METHOD IN OUR BRIEF ON PAGE 25;

AND WE HAVE CITED THE *NEWMAN-GREEN* CASE, AS WELL, ON PAGE 25 OF OUR BRIEF IN A FOOTNOTE – THAT THE FEDERAL RULES DO ALLOW FOR THE DISMISSAL OF THE NONDIVERSE PLAINTIFF.

THAT'S EXACTLY WHAT HAPPENED IN *TUCK*. IT WENT DOWN TO THE DISTRICT COURT. *TUCK* THEN PROCEEDED IN THAT FASHION. THEY SETTLED THE *TUCK* CASE AND PAID MONEY PURSUANT TO THAT FEDERAL [p. 16] JUDGMENT.

I DON'T KNOW HOW MR. FINE CAN GET UP HERE AND SAY THAT HE DOESN'T UNDERSTAND WHAT HAPPENED THERE. THEY SETTLED THAT CASE BASED UPON THE AMENDMENT THAT WAS ALLOWED AND THEN THEY FILED IN THE 10TH CIRCUIT THEIR REPORT BASED UPON THAT JURISDICTION.

THE SANCTIONS MOTION WAS IN FRONT OF THE *TUCK* COURT AT THE TIME THEY SETTLED, WHICH WAS VERY GOOD STRATEGY ON THEIR PART, SO THAT THE SANCTIONS MOTION WOULD NEVER BE HEARD.

THIS IS THE FIRST TIME THAT ANY COURT IS GOING TO DETERMINE WHAT SANCTIONS MAY BE APPROPRIATE FOR THEIR DISRESPECTFUL CONDUCT TO THIS COURT.

THE COURT: LET ME ASK YOU SOMETHING. I'M INTRIGUED BY WHAT HAPPENED IN *TUCK*; BUT *TUCK*, THAT WAS DONE IN 88 AND 89, I THINK, AND THEN *CARDEN* CAME OUT IN 90. AND THIS IS THE LANGUAGE THAT CONCERNS ME, MR. SHERNOFF,

IN *CARDEN*. IT'S ON PAGE 1021 OF THE SUPREME COURT REPORTER, WHERE SCALIA SAYS:

> "IN SUM, WE REJECT THE CONTENTION THAT TO DETERMINE FOR DIVERSITY PURPOSES THE CITIZENSHIP OF AN ARTIFICIAL ENTITY, THE COURT MAY CONSIDER THE CITIZENSHIP OF LESS THAN ALL THE ENTITY'S MEMBERS."

AND THEN IT GOES ON AND CITES THE CASES.

AND I WONDER IF THEY COULD HAVE DONE WHAT THEY DID IN *TUCK* HAD *CARDEN* BEEN ON THE BOOKS.

MR. SHERNOFF: I DON'T THINK THERE'S ANY QUESTION THAT [p. 17] THEY COULD. AS A MATTER OF FACT –

THE COURT: HOW WOULD THEY GET AROUND THIS?

MR. SHERNOFF: WELL, AS THIS MISSOURI CASE POINT [sic] OUT, BECAUSE THIS IS QUITE A TREATISE ON THIS SUBJECT, RULE 23.2 WAS AMENDED JUST FOR THAT PURPOSE: TO ALLOW FOR JURISDICTION FOR UNINCORPORATED ASSOCIATION.

ACCORDING TO THIS CASE – AND IT'S CITING THE HARVARD LAW REVIEW, 81 HARVARD LAW REVIEW 356 – RULE 23.2 WAS PROMULGATED TO PERMIT UNINCORPORATED ASSOCIATIONS TO CONTINUE TO UTILIZE THE CLASS ACTION PROCEDURE TO GET INTO FEDERAL COURT IN DIVERSITY CASES.

THE COURT: WELL, THEN, IF THAT'S THE CASE, YOU COULD HAVE A CLASS ACTION HERE AND NOT EVEN EXCLUDE FROM THE CLASS THOSE MEMBERS THAT LIVE IN CALIFORNIA –

MR. SHERNOFF: YES.

THE COURT: – JUST AS LONG AS YOU HAVE A REPRESENTATIVE OF THE CLASS WHO IS A NON-RESIDENT OF CALIFORNIA.

MR. SHERNOFF: THAT'S CORRECT, THE ATTORNEY OF FACT. AND THAT'S CERTAINLY ONE WAY TO GO.

I BELIEVE IN *TUCK* THEY WENT THE OTHER WAY. I THINK IN *TUCK* – BECAUSE I HAVE READ THE *TUCK* AMENDMENT AND I HAVE READ THE ORDER OF THE COURT IN *TUCK* PERMITTING THE AMENDMENT, WHICH I WOULD BE HAPPY TO SUPPLY TO THE COURT IF IT WISHES – I BELIEVE THAT IN THAT CASE THEY DID DISMISS THE DIVERSE SUBSCRIBERS.

[p. 18] THE COURT: THAT'S WHAT THE DISTRICT COURT OPINION IN THE FED. SUPP. INDICATED THEY DID DO.

MR. SHERNOFF: YES. SO I THINK IT COULD GO EITHER WAY; BUT MY PREFERENCE. YOU HONOR, IS THAT WE SHOULD DECIDE THIS CASE ONCE AND FIRST OF ALL. THIS IS IN [sic] IMPORTANT ISSUE –

THE COURT: YOU'RE RATHER INTRIGUED BY THE THEORY THAT THIS IS A RECIPROCAL INSURANCE EXCHANGE WHICH IS A SUABLE ENTITY AND DISTINCT IN CHARACTER AND LEGAL

NATURE FROM AN UNASSOCIATED – AN UNINCORPORATED ASSOCIATION?

MR. FINE: YES, YOUR HONOR. IT'S IMPORTANT ENOUGH, I FEEL, THAT THE ISSUE OUGHT TO BE AT LEAST HEARD, AT LEAST LIMITED EVIDENTIARY – I'D LIKE TO HAVE IT FULLY BRIEFED, BECAUSE THERE'S OTHER RECIPROCAL EXCHANGES AROUND: AUTO CLUBS, FARMERS INSURANCE EXCHANGE. I MEAN, THIS IS A RATHER IMPORTANT ISSUE FOR THESE COURTS.

AND IF YOU LOOK AT THE HISTORY OF WHAT THIS INSURANCE COMPANY DID TO THE FEDERAL COURTS OVER THE LAST FIVE YEARS AND THE JUDICIAL TIME THAT HAS BEEN SPENT, I WOULD THINK THAT: LET'S GET TO THE BOTTOM OF IT ONCE AND FOR ALL, RATHER THAN GOING TO THE ALTERNATIVE METHODS, WHICH WE CAN GO TO IF WE WANT (ILLEGIBLE)

THE COURT: WELL, AS A PRACTICAL MATTER, THOUGH, FROM YOUR STANDPOINT, IS IT WORTH SPENDING THE TIME AND EFFORT TO DO THAT IF THERE IS A QUICKER, SIMPLER, LESS EXPENSIVE WAY OF DOING IT IN THE FORM OF A CLASS ACTION?

[p. 19] MR. SHERNOFF: YES, YOU'RE CORRECT. IT IS SIMPLER AND IT'S QUICKER, AND I GUESS I'M THINKING MORE OF THE FUTURE. FOR PRECEDENT FOR OTHER CASES THAT MAY FOLLOW.

THERE'S A LOT OF CONFUSION HERE. I THINK WE SHOULD CLEAR UP THE CONFUSION AND SOME

COURT, UPON APPROPRIATE FINDINGS AND EVIDENCE, SHOULD DETERMINE WHETHER A RECIPROCAL INSURANCE EXCHANGE IS A CORPORATION FOR DIVERSITY PURPOSES.

THAT HAS NEVER BEEN DETERMINED SIMPLY BECAUSE – WE HAVE HOLDINGS TO THAT EFFECT IN *TUCK*, BUT *TUCK* NEVER DISCUSSED RECIPROCAL INSURANCE EXCHANGE.

THE COURT: I GATHER THAT GOING THIS ROUTE WOULD POTENTIALLY MEAN THAT THE *ROCKWELL CREDIT*, THE 9TH CIRCUIT CASE, WOULD NOT BE CONTROLLING –

MR. SHERNOFF: THAT'S CORRECT.

THE COURT: – BECAUSE THAT CLEARLY WAS NOT A RECIPROCAL INSURANCE EXCHANGE.

MR. SHERNOFF: THAT'S CORRECT. ANYTHING NOT A RECIPROCAL INSURANCE EXCHANGE IS NOT EVEN APPLICABLE, IN MY VIEW, SUCH AS *CARDEN* OR ANY OF THE OTHER CASES.

THERE ARE DIFFERENT RULES FOR VOLUNTARY UNINCORPORATED ASSOCIATIONS THAN – DISTINCT FROM RECIPROCAL INSURANCE EXCHANGES. THAT'S A CREATURE OF STATUS.

YOU CAN'T GO OUT, VOLUNTARILY CREATE A RECIPROCAL INSURANCE EXCHANGE, LIKE YOU CAN A LIMITED PARTNERSHIP OR VOLUNTARY ASSOCIATION. YOU CAN'T DO IT.

[p. 20] YOU HAVE TO FOLLOW THE STATUTE. YOU HAVE TO BE AN INSURANCE COMPANY. YOU

HAVE TO FOLLOW CERTAIN PRESCRIBED THINGS IN THE STATUTE.

THE COURT: AND I – EXCUSE ME, MR. SHERNOFF.

THEN, IN THIS CASE, DO WE HAVE TO LOOK TO TEXAS LAW TO DETERMINE WHAT U.S.A.A. REALLY IS?

MR. SHERNOFF: I BELIEVE SO.

THE COURT: OR CALIFORNIA LAW?

MR. SHERNOFF: I BELIEVE TEXAS LAW.

THE COURT: IN OTHER WORDS, EVEN THOUGH THIS IS A DIVERSITY CASE, WE LOOK TO THE STATE IN WHICH THIS U.S.A.A. WAS CREATED?

MR. SHERNOFF: YES, TEXAS LAW AND TEXAS STATUTES.

AND IF YOU DO, AS U.S.A.A. HAS POINTED OUT WHEN IT SUITED THEIR PURPOSES, YOU WILL FIND THE TEXAS STATUTES, YOU WILL FIND THE TEXAS APPELLATE COURT CASES, WHICH HOLD THAT THIS IS A – IT SHOULD BE TREATED AS A CORPORATION.

THE COURT: IF THAT'S THE CASE, THEN WHY COULDN'T WE JUST HAVE BRIEFING WITHOUT A HEARING?

MR. SHERNOFF: WE COULD. WE COULD. I THOUGHT A HEARING MIGHT BE APPROPRIATE TO DETERMINE WHETHER OR NOT PERHAPS EVIDENTIARY-WISE SOME TESTIMONY MIGHT BE IN ORDER

ABOUT THEIR CORPORATE STRUCTURE. THEY ARE A HOLDING COMPANY, TOO.

WHEN YOU HAVE A RECIPROCAL EXCHANGE, YOU HAVE SEVERAL COMPANIES. YOU USUALLY HAVE A MANAGEMENT COMPANY AND AN [p. 21] EXCHANGE. SOMETIMES THE MANAGEMENT COMPANY, WHICH IS THE PARENT COMPANY, IS INCORPORATED.

YOU GET INTO SOME COMPLEX SITUATIONS. AND ALL I REALLY WANTED TO DO IS PUT THE TRUTH IN FRONT OF THE COURT FOR ONCE AND FOR ALL.

THE COURT: WELL, I THINK YOU CAN TELL FROM MY QUESTIONS TO YOU THAT I AM CONCERNED ABOUT *CARDEN*, AND I THINK THAT THAT'S CONTROLLING. AND IF U.S.A.A. WERE NOT A RECIPROCAL INSURANCE EXCHANGE AND THEREFORE A SEPARATE ENTITY, BUT REALLY AN UNINCORPORATED ASSOCIATION, I THINK *CARDEN* CONTROLS AND THIS COURT WOULD NOT HAVE JURISDICTION.

I THINK TO GO AND USE YOUR FIRST ALTERNATIVE, FOR THIS COURT TO MAINTAIN JURISDICTION IT WOULD HAVE TO FIND THAT THE RECIPROCAL INSURANCE EXCHANGE IS A CREATURE THAT IS DISTINGUISHABLE FROM THE LANGUAGE OF *CARDEN*.

MR. SHERNOFF: AND I WOULD URGE, CERTAINLY, THIS COURT TO GO DOWN THAT PATH AND LET'S LOOK AT IT, BECAUSE I AM CONFIDENT, YOUR

HONOR, THAT ONCE YOU GET THE WHOLE OF IT AND THE FULL BRIEFING IN FRONT OF YOU ON THIS PRECISE QUESTION, THAT YOU WILL FIND THAT THERE IS JURISDICTION.

THERE'S ONLY A FEW COURTS THAT HAVE LOOKED AT IT, BUT EVERY COURT THAT HAS HAS SO FOUND.

AND QUITE FRANKLY, I CERTAINLY WELCOME THAT, AND I THINK IT'S IMPORTANT NOT ONLY FOR THIS CASE BUT OTHERS THAT MAY FOLLOW.

[p. 22] AND WITH THAT, I WOULD LIKE TO TURN TO THE SANCTIONS ISSUE, UNLESS YOU HAVE FURTHER QUESTIONS CONCERNING JURISDICTION.

THE COURT: AT SOME POINT IN TIME, I WANT TO ASK MR. FINE HIS RESPONSE TO YOUR SUGGESTION OF FURTHER BRIEFING ON THE ISSUE OF RECIPROCAL INSURANCE EXCHANGE, BUT YOU GO AHEAD ON THE SANCTIONS ISSUE.

MR. SHERNOFF: YOUR HONOR, ON THE SANCTIONS ISSUE, I FEEL VERY, VERY CONCERNED, TO SAY THE LEAST. I THINK YOU COULD TELL THAT FORM THE FLAVOR OF THE PAPERS THAT WE PUT FORTH.

MY FEELING IS THE INTEGRITY OF THE FEDERAL COURT AND THE FEDERAL COURT SYSTEM IS SOMEWHAT AT STAKE HERE. THIS IS THE FIRST TIME ANY COURT OR ANY JUDGE IS GOING TO ACTUALLY RULE ON WHETHER OR NOT CONDUCT SUCH AS THIS, MOST OF WHICH THEY ADMIT, SHALL BE

SANCTIONED OR SHALL BE APPROVED BY THE FEDERAL COURTS.

I THINK IT'S SHAMEFUL. HE SAYS THEY'VE CLEANED UP THEIR ACT SINCE *TUCK*. THAT'S NOT THE CASE, YOUR HONOR.

WE'VE POINTED OUT IN OUR BRIEF THREE CASES THAT WE HAVE FOUND SINCE *TUCK* WHERE THEY HAVE – TO THEIR ADVANTAGE, WENT AND SECURED MONEY BY FEDERAL COURT JURISDICTION.

THE FIRST ONE IS *BARGER*, WHICH WE HAVE POINTED OUT ON PAGE 6 IN OUR BRIEF. THE SECOND ONE WAS *EVANGELISTA*, WHERE THEY FILED – HERE THEY FILED IN FEDERAL COURT, AFTER THE *TUCK* DECISION, YOUR HONOR; FILED IN FEDERAL COURT.

[p. 23] THE COURT: ON A DIVERSITY JURISDICTION BASIS.

MR. SHERNOFF: YES. AND THE FIRST ONE, ALSO.

BUT THE WORST ONE IS THE ONE IN THE 9TH CIRCUIT, IN THIS CIRCUIT, WHICH WAS THE *H.I.G.* CASE, THE HAWAIIAN CASE, WHERE ALMOST FIVE MONTHS AFTER *TUCK* WAS FINAL, THEY SECURED A $300,000.00 JUDGMENT AND HAD A COMPANY PAY TO THEM $300,000.00 BASED UPON DIVERSITY, KNOWING FULL WELL WHAT *TUCK* SAID.

NOW, I JUST CAN'T IMAGINE CONDUCT THAT IS MORE DESERVING OF SOME TYPE OF SANCTION THAN THIS. I MEAN, SOME SIGNAL HAS TO BE SENT

OUT BY THIS COURT TO NOT ONLY LAWYERS, BUT MORE IMPORTANTLY, LITIGANTS, PARTIES, THAT YOU JUST CAN'T PLAY GAMES LIKE THIS WITH THE FEDERAL COURT SYSTEM.

FOR THIS COURT NOT TO TAKE ANY ACTION WOULD BE LIKE PUTTING A STAMP OF APPROVAL ON THIS TYPE OF CONDUCT, SIMPLY BECAUSE THEY FOUND A WAY TO AVOID THE SANCTION MOTION IN *TUCK* BY PAYING THE JUDGMENT THAT THEY SHOULD HAVE PAID YEARS BEFORE. THEY SCOOPED THAT ONE UNDER THE RUG.

THERE'S NO WAY THEY'RE GOING TO SCOOP THIS ONE UNDER THE RUG. WE DEFINITELY THINK THAT THIS CONDUCT HAS TO BE REVIEWED, AND WE THINK IT'S JUST A VERY SERIOUS MATTER.

THE COURT: WELL, I WAS SURPRISED, TO SAY THE LEAST, WHEN I READ THE LITANY OF EVENTS THAT HAVE OCCURRED INVOLVING U.S.A.A.; BUT I AM CONCERNED ABOUT THE AUTHORITY THAT ONE COURT HAS TO IMPOSE SANCTIONS ON A LITIGANT FOR CONDUCT IN OTHER FORUMS.

[p. 24] MR. SHERNOFF: WELL, I HAVE FOUND A CASE – WELL, I'VE GOT TWO COMMENTS ON THAT.

THERE IS *IN RE I T E L SECURITIES LITIGATION*, FOUND AT 791 FED. 2D 672 – IT'S A 9TH CIRCUIT CASE – WHERE THERE WERE SANCTIONS AWARDED IN THAT CASE AGAINST AN ATTORNEY, WHERE THE ATTORNEY ADMITTED THAT HE FILED OBJECTIONS

IN A CLASS ACTION SETTLEMENT PROCEEDING IN ORDER TO EXACT FEE CONCESSIONS IN A RELATED LAWSUIT PENDING IN ANOTHER COURT. SO I THINK THERE IS SOME AUTHORITY FOR THIS.

BUT, YOUR HONOR, I THINK I WOULD RATHER PREFACE MY ARGUMENT MORE ON THE INHERENT POWER OF THE COURT TO POLICE ITS OWN RULES. IF THE FEDERAL COURTS DON'T HAVE THE INHERENT POWER TO SANCTION AND POLICE THEIR OWN RULES AND CAN ALLOW CONDUCT LIKE THIS TO GO ON JUST BECAUSE IT ESCAPED NOTICE AND IS FINALLY BROUGHT TO THE ATTENTION OF THE COURT, IT DEFIES REASONING AND LOGIC THAT THE COURT WOULD NOT HAVE THE POWER FOR SOME TYPE OF SANCTION.

AND PERHAPS IF THE COURT IS GOING TO LOOK AT THIS OTHER ISSUE, IT MIGHT WANT TO RESERVE RULING ON THE SANCTIONS, AS WELL, TO ALLOW US TO PERHAPS ENTERTAIN IDEAS OF AN APPROPRIATE SANCTION, WHICH COULD EVEN BE SOMETHING –

THE COURT: THAT WAS A THOUGHT I HAD. I THINK THAT BEFORE THIS COURT CAN TAKE A STRONG POSITION OR A POSITION ONE WAY OR ANOTHER ON SANCTIONS, IT BETTER MAKE SURE IT'S GOT JURISDICTION.

[p. 25] MR. SHERNOFF: YES, BECAUSE THIS IS A SERIOUS MATTER. THIS CASE, NATURALLY, ON THE SANCTIONS ISSUE, IS GOING TO BE WATCHED. THERE'S NO QUESTION ABOUT IT. THE SIGNAL THAT GOES OUT FROM THIS CASE IS GOING TO TELL

LAWYERS AND LITIGANTS IN THE FUTURE FOR THE NEXT I-DON'T-KNOW-HOW-MANY YEARS HOW TO BEHAVE IN FEDERAL COURT.

I MEAN, WHAT HAPPENED HERE IS SHAMEFUL, YOUR HONOR; AND THERE'S NO WAY THAT THE FEDERAL COURT CAN ALLOW THIS TO HAPPEN AND STAND BY.

AND FOR A PARTY TO COME INTO COURT AND SAY, "WELL, YES, WE DID ALL THIS WRONG IN THE PAST; BUT NOW WE'RE FIRST BEING DISCOVERED IN THIS CASE AND YOU CAN'T PUNISH US FOR OUR PAST CONDUCT," I CAN'T BELIEVE ANYBODY'D BUY THAT ARGUMENT. THAT'S LIKE A BANK ROBBER COMING IN SAYING, "YES, I ROBBED THE BANK 17 TIMES IN THE PAST; BUT THIS IS A DIFFERENT CASE. YOU CAN'T PUNISH ME FOR THAT."

IT'S MORE SERIOUS THAN THAT. AS A MATTER OF FACT, I WOULD HAVE EXPECTED – AND I THINK THIS IS ANOTHER REASON TO TAKE THIS MORE SERIOUS, THIS SANCTION ISSUE: I WOULD HAVE EXPECTED U.S.A.A. TO COME IN FRONT OF THIS COURT WITH A MUCH DIFFERENT POSTURE. I WOULD HAVE EXPECTED THEM TO SAY, "JUDGE, WE HAVE COMMITTED SOME PRETTY BAD STUFF IN THE PAST; AND WE PROBABLY SHOULD BE PUNISHED FOR IT," AND EVEN, "WE'VE DONE SOME BAD STUFF SINCE *TUCK*, AND WE'RE REALLY TRYING TO CLEAN UP OUR ACT, AND WE SHOULD HAVE SOME APPROPRIATE SANCTIONS; AND, YES, [p. 26] THERE MAY BE JURISDICTION, AND THERE MAY BE JURISDICTION

BECAUSE A RECIPROCAL EXCHANGE IS DIFFERENT," AND TELL THE COURT WHAT THEY ARGUED IN *PRIDGEN* INSTEAD OF HIDING ALL THAT FROM THE COURT.

THEY KNOW BETTER, YOUR HONOR. THEY KNOW – I THINK THEY SHOULD KNOW THAT THEY'RE NOT GOING TO PULL THE WOOL OVER THIS COURT'S EYES.

BUT IF YOU LOOK AT THEIR REPLY BRIEF CAREFULLY, AND AS YOU LISTEN TO COUNSEL VERY MATTER-OF-FACTLY, AND, YOU KNOW, "LET'S JUST TREAT THIS AS A ROUTINE MATTER. DON'T GET EXCITED, JUDGE" – I'M EXCITED ABOUT THIS. IT OFFENDS ME.

IF I COMMITTED CONDUCT ONE TENTH AS BAD AS THEY DO, YOU WOULD TELL ME TO HAVE MY TOOTHBRUSH AND I'D BE GONE.

THE COURT: I'M CONCERNED ABOUT THE FACT THAT U.S.A.A. CAN ALL OF A SUDDEN GET RELIGION AND JUST SAY, "NOW WE'RE OKAY AND YOU CAN'T TOUCH US AGAIN"; AND, YOU KNOW, AS AN OFFICER OF THE COURT, I THINK WE ALL ARE CONCERNED ABOUT THIS; BUT I ALSO AM CONCERNED ABOUT WHAT THIS COURT HAS THE LEGAL AUTHORITY TO DO, FRANKLY.

MR. SHERNOFF: YES. AND I AGREE, AND THAT IS SOMETHING THAT I WOULD LIKE TO HAVE THE OPPORTUNITY, AND I KNOW THE COURT WOULD, TOO, TO LOOK INTO AT A LITTLE GREATER DEPTH, BECAUSE THIS WHOLE AREA OF THE

INHERENT POWER OF THE COURT TO SANCTION IS SOMETHING THAT, IF THE COURT WOULD PERMIT ME, I WOULD WELCOME THE OPPORTUNITY TO GET INTO THAT DEEPER BECAUSE [p. 27] OF THE SERIOUSNESS OF THE CHARGES IN THIS PARTICULAR CASE.

THE COURT: I APPRECIATE THAT.

I'M GOING TO HEAR FROM MR. FINE.

AND SPECIFICALLY, MR. FINE, I'M INTRIGUED BY THE POSSIBILITY THAT U.S.A.A. IS NOT JUST AN INCORPORATED ASSOCIATION, BUT MAY BE A RECIPROCAL INSURANCE EXCHANGE, WHICH IS A MEANINGFUL DISTINCTION FROM THE UNINCORPORATED.

MR. FINE: LET ME ADDRESS THOSE ISSUES, YOU HONOR. I THINK THEY'VE BEEN ADDRESSED BEFORE. AND BECAUSE OF THE COURT'S CONCERN, LET ME READ SOME OF THE OPINION FROM THE *BAER* DECISION WHICH IS A 1974 OPINION, PAGE 395.

THE COURT: 2ND CIRCUIT. I HAVE THAT, I THINK. LET ME GRAB IT HERE.

(PAUSE.) OH, MAYBE I DON'T HAVE *BAER*.

MR. FINE: IT'S A BRIEF SECTION, YOUR HONOR. IT READS:

> "THUS, UNDER THE TEXAS STATUTE, THE RECIPROCAL IS REGARDED AS DISTINCT FROM AN INSURANCE" – QUOTE – " 'STOCK COMPANY' " – UNQUOTE – "OR, IN

OTHER WORDS, FROM AN INSURANCE CORPORATION.

"AS WE SHALL SOON POINT OUT, THIS FORMAL DISTINCTION DRAWN BETWEEN THE INSURANCE RECIPROCAL AND THE INSURANCE CORPORATION UNDER STATE LAW SEEMS TO BE, UNDER *UNITED STEEL WORKERS VERSUS R. H. BOULIGNY, INC.*," – I'LL NOT READ THE CITE – [p. 28] "DISPOSITIVE ON THE ISSUE OF WHETHER THE RECIPROCAL SHOULD BE CONSIDERED A CORPORATION FOR DIVERSITY PURPOSES."

THE COURT: IS THAT A NEW YORK ORGANIZATION?

MR. FINE: U.S.A.A. IS THE SAME TEXAS –

THE COURT: OH, THAT'S RIGHT. THAT WAS U.S.A.A.

MR. FINE: YES.

"IRRESPECTIVE OF WHETHER THE DISTINCTION IS A PRACTICAL MATTER, AN ARTIFICIAL OR ILLOGICAL ONE, THE EXISTENCE OF THE DISTINCTION UNDER STATE LAW AND NOT THE LOGIC UNDERLYING THAT DISTINCTION IS THE PARAMOUNT CONSIDERATION. INASMUCH AS THE TEXAS STATUTE DRAWS THAT DISTINCTION, WE ARE CONSTRAINED HERE TO REGARD UNITED AS AN INCORPORATED ASSOCIATION.

"FOR THE PURPOSE OF DETERMINING WHETHER DIVERSITY JURISDICTION EXISTS, UNINCORPORATED ASSOCIATIONS HAVE LONG BEEN CONSIDERED TO BE CITIZENS

OF EACH AND EVERY STATE IN WHICH THE ASSOCIATION HAS MEMBERS."

I'LL END THE QUOTE THERE.

THE COURT: WHAT DOES TEXAS LAW SAYS [sic]?

MR. FINE: THAT IS THE ANALYSIS UNDER TEXAS LAW, YOUR HONOR. THE COURT IN *BAER* ANALYZED THE TEXAS STATUTES, WHICH BASICALLY ALLOWED FOR THE FORMATION OF THE RECIPROCAL NOW KNOWN AS U.S.A.A.

[p. 29] THE *BAER* DECISION WAS THEN CITED BY THE *TUCK* COURT, AT PAGE 845:

"THIS IS NOT THE FIRST TIME THAT U.S.A.A. HAS FACED THIS PROBLEM. IN *BAER VERSUS UNITED SERVICES AUTOMOBILE ASSOCIATION*, PLAINTIFF BAER APPEALED A JUDGMENT IN FAVOR OF U.S.A.A. TO THE 2ND CIRCUIT. THE COURT OF APPEALS RAISED THE QUESTION OF JURISDICTION SUA SPONTE AND AFTER CAREFUL EVALUATION OF U.S.A.A.'S STATUS UNDER TEXAS LAW DETERMINED THAT FOR DIVERSITY PURPOSES, U.S.A.A. WAS PROPERLY CONSIDERED A CITIZEN" – QUOTE – " 'OF EACH AND EVERY STATE IN WHICH IT HAS MEMBERS' " – END QUOTE.

"THE TUCKS OFFER NOTHING THAT PERSUADES US TO DEPART FROM THE HOLDING IN *BAER*. ACCORDINGLY, WE ARE FORCED TO CONCLUDE THAT AS THE CASE NOW STANDS, THERE IS NOT COMPLETE

DIVERSITY AMONG THE PARTS, AND SUBJECT MATTER JURISDICTION IS LACKING," END QUOTE.

I SUBMIT TO THIS COURT THAT THE WATERS OFFER NOTHING NEW, AS WELL.

BUT FOLLOWING *TUCK*, WE HAVE *CARDEN*; AND THE COURT WENT TO THE SECTION OF THE OPINION THAT I WOULD HAVE READ TO YOU NOW, THE SAME SECTION THAT I THINK CONTROLS YOUR DECISION IN THIS CASE.

YOU ASKED BEFORE ABOUT: WHAT DO YOU DO ABOUT FEDERAL RULE OF CIVIL PROCEDURE 23.2 IN A CLASS ACTION? THE HISTORY OF [p. 30] *TUCK*, AS MR. SHERNOFF POINTED OUT, IS THAT THE *TUCK* COURT ADOPTED A CLASS ACTION APPROACH. U.S.A.A. APPEALED THE DISSENT TO THE 10TH CIRCUIT, URGING THAT THIS APPROACH WAS NOT PERMISSIBLE. THE CASE SETTLED BEFORE THE 10TH CIRCUIT EVER DEALT WITH THAT.

THE GOVERNING PROVISIONS OF CLASS ACTIONS INDICATE THAT U.S.A.A IS NOT GIVEN LEGAL STATUS OR ENTITY TREATMENT UNDER APPLICABLE STATE LAW; AND THAT'S WHAT I REFERRED TO BEFORE, YOUR HONOR, WAS THE INSURANCE CODE SECTION. I BELIEVE IT'S 1450.

THE COURT: ARE YOU SAYING THAT *TUCK* SAID THAT IT COULD NOT GO FORWARD AS A CLASS ACTION?

MR. FINE: NO, THE TRIAL COURT IN *TUCK* –

THE COURT: THE TRIAL COURT IN *TUCK* DID GO FORWARD.

MR. FINE: – DID GO FORWARD. U.S.A.A. APPEALED TO THE 10TH CIRCUIT ON THAT ISSUE, AND THAT ISSUE WAS OF COURSE RESOLVED WITH THE SETTLEMENT.

THE COURT: WELL, NO. I THINK THE TRIAL COURT WENT FORWARD WITH THE CLASS ACTION AFTER THE 10TH CIRCUIT HAD RULED.

MR. FINE: YOUR HONOR, YOU MAY BE CORRECT. I WAS NOT THE COUNSEL ON THAT CASE.

THE COURT: WELL, THE *TUCK* DECISION FROM THE TRIAL COURT IS 1990, AND THE 10TH CIRCUIT *TUCK* IS 1988.

AND THE ORDER OF THE TRIAL COURT SAYS, IN ITS ORDER, THAT: THIS ACTION SHALL BE MAINTAINED AS A CLASS ACTION [p. 31] PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 23.2.

MR. FINE: I BELIEVE THERE WAS AN APPEAL OF THAT, THOUGH, YOUR HONOR.

THE COURT: WELL, I DON'T KNOW. I THINK THAT DISPOSED OF THE CASE.

MR. FINE: AGAIN, I WILL ACCEPT THAT. IT WAS MY UNDERSTANDING THERE WAS AN APPEAL OF THAT AND IT WAS SETTLED WHILE IT WAS ON APPEAL.

THE COURT: WELL, THAT COULD BE.

MR. FINE: I JUST WANTED TO POINT OUT THAT FEDERAL RULE OF CIVIL PROCEDURE 23.2, THE ADVISORY COMMITTEE NOTES, INDICATES THAT THE RULE IS INTENDED TO APPLY, QUOTE:

> "TO THE ASSOCIATION WHEN FOR FORMAL REASONS IT CANNOT SUE OR BE SUED AS A JURAL PERSON UNDER RULE 17(B)," END QUOTE.

RULE 17(B) PROVIDES THAT AN UNINCORPORATED ENTITY'S CAPACITY TO BE SUED IS DETERMINED BY THE LAW OF THE STATE IN WHICH DISTRICT COURT IS HELD.

CALIFORNIA LAW CONTROLS U.S.A.A.'S ENTITY STATUS HERE; AND AS THE WATERS POINT OUT – NOT U.S.A.A., THE WATERS POINT OUT – IN THEIR MEMORANDUM AND OPPOSITION TO THE MOTION TO DISMISS, AND THAT'S AT PAGE 24-25, CALIFORNIA LAW CONSIDERS A RECIPROCAL INSURER, SUCH AS U.S.A.A., TO BE AN ENTITY CAPABLE OF MAINTAINING SUIT IN ITS OWN RIGHT.

THE COURT: WELL, DO YOU THINK BECAUSE THIS IS A [p. 32] DIVERSITY CASE THAT CALIFORNIA LAW MUST BE LOOKED TO TO [SIC] DETERMINE THE NATURE OF THE DEFENDANT?

MR. FINE: NO, YOUR HONOR. BUT UNDER RULE 23, AS TO WHETHER OR NOT YOU CERTIFY THIS AS A CLASS ACTION, I THINK, YES, YOU HAVE TO LOOK TO CALIFORNIA LAW.

AS TO WHETHER OR NOT U.S.A.A. IS A RECIPROCAL FOR DIVERSITY PURPOSES, I THINK YOU HAVE

TO LOOK AT TEXAS LAW. AND I THINK THAT'S WHAT *BAER* DID, I THINK THAT'S WHAT *TUCK* DID, AND I THINK UNDER *BAER* AND *TUCK* AND THE *UNITED STATES STEEL WORKER* CASE UNDER THE 9TH CIRCUIT, THAT I REFERRED TO, AND THE *ROCKWELL INTERNATIONAL CREDIT CORPORATION VERSUS UNITED STATES AIRCRAFT INSURANCE CASE*, UNDER THE 9TH CIRCUIT —

THE COURT: BUT THOSE ARE ALL UNINSURED ASSOCIATIONS; AND I THINK I TEND TO AGREE THAT *CARDEN* AND *ROCKWELL* WOULD CONTROL, IF THAT'S WHAT U.S.A.A. REALLY IS.

MR. FINE: WELL, YOUR HONOR, THERE'S NO EVIDENCE TO THE CONTRARY.

THE WATERS ALLEGE THAT THEY'RE RECIPROCAL. U.S.A.A. ADMITS IT'S A RECIPROCAL AND FILES ITS AFFIDAVIT IN SUPPORT OF THAT FACT.

WE HAVE TWO COURT OF APPEAL DECISIONS WHO HAVE REVIEWED SPECIFICALLY WHETHER OR NOT U.S.A.A. AS A RECIPROCAL IS ENTITLED TO MAINTAIN AN ACTION IN THE FEDERAL COURT. BOTH THE 2ND AND THE 10TH CIRCUIT SAY NO.

SO I FIND THAT — I DON'T KNOW WHAT PURPOSE IS GOING [p. 33] TO BE SERVED BY HAVING AN EVIDENTIARY HEARING, AS MR. SHERNOFF SUGGESTS. AND IN TERMS OF BRIEFING, I THINK THAT WE HAVE BRIEFED, BOTH MR. SHERNOFF HAS AND WE HAVE BRIEFED THE MATTER SUFFICIENTLY FOR THIS COURT TO MAKE A DETERMINATION.

WE DID NOT CITE, I BELIEVE, YOUR HONOR, THE CASE OF *NORTHBROOK EXCESS AND SURPLUS INSURANCE COMPANY VERSUS MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION OF MASSACHUSETTS*, WHICH IS FOUND AT 900 FED. 2D 476, THE 1ST CIRCUIT, 1990 DECISION.

THE COURT: SAY THE CITATION AGAIN, PLEASE.

MR. FINE: 900 FED. 2D 476. AND THAT WAS A DECLARATORY RELIEF ACTION BROUGHT BY AN INSURANCE COMPANY, WHICH IS NORTHBROOK, AGAINST AN UNINCORPORATED ASSOCIATION, THE UNDERWRITING ASSOCIATION. AND JURISDICTION WAS PREMISED ON DIVERSITY, THE DISTRICT COURT RULED IN THE PLAINTIFF'S FAVOR, BUT WHILE THE DECISION WAS ON APPEAL THE DEFENDANT CHALLENGED THE DISTRICT COURT'S SUBJECT MATTER JURISDICTION BY POINTING TO ITS JUDICIAL STATUS AND THE FACT THAT ONE OF ITS MEMBERS WAS A CITIZEN OF THE SAME STATE AS THE PLAINTIFF.

THE PLAINTIFF SOUGHT TO AMEND THE COMPLAINT, TO RESTYLE THE CASE AS A CLASS ACTION. THE 1ST CIRCUIT REMANDED FOR THE DISTRICT COURT TO CONSIDER THE JURISDICTIONAL ISSUE. THE DISTRICT COURT CONCLUDED THAT RULE 23.2 DID NOT ALLOW A CLASS ACTION TO BE BROUGHT AGAINST AN ENTITY THAT HAD JURAL STATUS UNDER STATE LAW AND THEREFORE DISMISSED FOR LACK OF [p. 34] SUBJECT MATTER JURISDICTION.

I DON'T KNOW OF ANY 9TH CIRCUIT CASE TO REACH A SIMILAR CONCLUSION, YOUR HONOR; BUT I THINK THAT THAT CASE IS DISPOSITIVE OF THE 23.2 ISSUE THAT YOU RAISED IN TERMS OF CLASS ACTION.

DO YOU HAVE ANY OTHER QUESTIONS?

THE COURT: NO, I DON'T MR. FINE. THANK YOU.

MR. FINE: WITH RESPECT TO SANCTIONS, IF THAT'S STILL AN ISSUE BEFORE THIS COURT, I'D LIKE TO RESPOND TO MR. SHERNOFF.

THE COURT: AS TO THE JURISDICTION ISSUE, I'M INTERESTED IN THE CONCEPT THAT THE RECIPROCAL INSURANCE EXCHANGE MAY RESULT IN A SUABLE ENTITY THAT IS DISTINCTLY DIFFERENT THAN THE INCORPORATED ASSOCIATION THAT WE FIND REFERRED TO IN SOME OF THE CASES. AND I'M GOING TO ACCEPT MR. SHERNOFF'S OFFER TO FURTHER BRIEF THAT SUBJECT, NOT SET UP AN EVIDENTIARY HEARING AT THIS TIME, BUT RESERVE THE POSSIBILITY OF HAVING AN EVIDENTIARY HEARING.

BUT I'D LIKE TO KNOW WHETHER OR NOT THERE IS ESTABLISHED CASE LAW, PARTICULARLY OUT OF TEXAS, BECAUSE I THINK WE ALL AGREE THAT WE HAVE TO LOOK TO TEXAS TO DETERMINE REALLY WHAT THIS U.S.A.A. IS.

AND LURKING, OF COURSE, IN THE BACKGROUND IS THE SANCTION ISSUE AND THE INHERENT POWER OF THE COURT. I THINK THAT WE OUGHT TO ADDRESS ONE AT A TIME, HOWEVER.

[p. 35] I'M INTERESTED MORE IN THE JURISDICTIONAL ISSUE AND I'M INCLINED TO RESERVE, UNLESS YOU WANT TO COME FORWARD WITH THE BRIEFING AT THIS TIME ON THE SANCTION ISSUE. BUT IF YOU DON'T, WE CAN CERTAINLY HANDLE THAT LATER, MR. SHERNOFF.

MR. SHERNOFF: WELL, YOUR HONOR, THE WAY I FEEL ABOUT THE SANCTIONS ISSUE IS, I KNOW I'M AN ADVOCATE, BUT THAT ISSUE GOES MORE TO THE COURT, REALLY, ABOUT HOW THE COURT FEELS ABOUT THE IMPORTANCE OF ITS OWN — THE CONDUCT AND POLICING OF ITS OWN RULES.

I'M CERTAINLY WILLING TO BRIEF IT NOW OR LATER. I THINK IT MIGHT, FOR EFFICIENCY PURPOSES, BE BETTER IF WE BRIEFED IT AT THE SAME TIME, SO THAT WE DON'T HAVE A DOUBLE BRIEFING SCHEDULE.

THE COURT: WELL, THAT'S FINE. ASSUMING WE DO THAT, THEN BRIEF BOTH THOSE ISSUES. AND AS A FALL-BACK POSITION, OF COURSE, YOU MAY WANT TO ALSO INCLUDE IN YOUR BRIEF YOUR NUMBER 2 OPTION, AND THAT IS THE CLASS ACTION, AMENDING YOUR PLEADINGS TO TRY TO CREATE A CLASS ACTION WHICH WOULD RETAIN JURISDICTION IN THIS COURT. SO MAYBE ALL THREE OF THOSE WANT TO BE TOUCHED.

HOW MUCH TIME DO YOU WANT?

MR. SHERNOFF: WELL, I WOULD LIKE PROBABLY TWO WEEKS, TWO OR THREE WEEKS.

THE COURT: I WAS THINKING MAYBE 30 DAYS. CAN YOU DO IT IN THAT SHORT A TIME?

MR. SHERNOFF: 30 DAYS IS FINE.

[p. 36] THE COURT: 30 DAYS.

HOW MUCH TIME DO YOU WANT TO RESPOND, MR. FINE?

MR. FINE: I WOULD LIKE AN EQUAL AMOUNT OF TIME, YOUR HONOR; BUT IF THE COURT HAS IMPOSED A TRIAL DATE OF MARCH 2ND ON THE PARTIES, AND WE WOULD HAVE TO GET ON WITH DISCOVERY AND SPEND A LOT [sic] MONEY IN THIS JURISDICTION OR PUT OFF THE TRIAL DATE, THEN I'D LIKE A SIMILAR AMOUNT OF TIME TO RESPOND.

THE COURT: WELL, I'LL GIVE YOU 20 DAYS TO RESPOND; AND WE'RE GOING TO HOLD THE TRIAL DATE, AT LEAST AT THIS STAGE; AND HOW YOU WANT TO PROCEED FOR PRETRIAL IS UP TO COUNSEL.

BUT WE HAVE A TRIAL DATE — I THINK IT'S MARCH 2ND. IS THAT WHAT YOU SAID? IT [sic] THINK THAT SOUNDS RIGHT.

MR. FINE: I BELIEVE THAT'S THE DATE THE COURT IMPOSED.

MR. SHERNOFF: ARE THERE ANY REPLY PAPERS APPROPRIATE TO THE RESPONSE?

THE COURT: WOULD YOU LIKE TO REPLY? WHAT WOULD YOU LIKE: 10 DAYS?

MR. SHERNOFF: 10 DAYS.

THE COURT: AND ALL THAT STARTS FROM TODAY. IS THAT SATISFACTORY?

MR. SHERNOFF: YES, SIR.

THE COURT: ANYTHING FURTHER, THEN?

MR. SHERNOFF: NOTHING FURTHER.

MR. FINE: YOUR HONOR?

[p. 37] MR. SHERNOFF: OH, YES. I DID WANT TO CORRECT A CITATION I GAVE YOU IN THAT MISSOURI CASE, YOU HONOR. THE MISSOURI CASE IS —

THE COURT: YOU SAID 263 SOUTHWEST 2ND 68.

MR. SHERNOFF: IT'S 49 ACTUALLY: SOUTHWEST 2ND 49. IT'S 636 SOUTHWEST 2ND 49, *AUTO CLUB VERSUS*, G A E T N E R, *GAETNER*.

THE COURT: SO 636 SOUTHWEST 2ND AT PAGE 49.

MR. SHERNOFF: YES.

THE COURT: 1982.

MR. SHERNOFF: YES.

THE COURT: THANK YOU, MR. SHERNOFF. MR. FINE. ANYTHING FURTHER?

MR. FINE: YES, YOUR HONOR. ARE WE GOING TO SCHEDULE A FURTHER HEARING ON THIS MATTER OR ARE YOU GOING TO TAKE IT UNDER SUBMISSION?

THE COURT: WELL, LET'S SUBMIT THE BRIEFS, AND I MAY CALL FOR A HEARING. I WANT TO LEAVE THAT OPEN.

AND IF WE HAVE TO HAVE AN EVIDENTIARY HEARING, IF WE DETERMINE THAT THAT'S APPROPRIATE, THAT, OF COURSE, MAY HAVE AN INFLUENCE ON THE TRIAL DATE, KEEPING THE TRIAL DATE. THAT'S ONE REASON I'M RELUCTANT TO SCHEDULE IT, BECAUSE I CAN UNDERSTAND THAT WE DO HAVE A TRIAL DATE THAT'S NOT TOO FAR DOWN THE LINE; AND FOR THE INTERESTS OF THE PARTIES, I THINK I'D LIKE TO TRY TO MAINTAIN THAT IF IT'S REALISTIC.

[p. 38] SO WE'LL RESERVE RULING ON ANY CHANGING OF THE TRIAL DATE; BUT THAT'S NOT REALLY BEFORE THE COURT RIGHT NOW, ANYWAY. WE'LL MAINTAIN THAT TRIAL DATE.

IF THERE'S NOTHING FURTHER, WE'LL ADJOURN.

MR. FINE: THANK YOU, YOUR HONOR.

MR. SHERNOFF: THANK YOU, YOUR HONOR.

THE COURT: PLEASE RISE. THIS COURT IS IN RECESS.

(PROCEEDINGS ADJOURNED.)

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/ Susan A Lee
SUSAN A. LEE,
CSR 2800, CM,
RPROFFICIAL COURT
REPORTER

DATED:
November 8, 1991

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAUGHLIN E. WATERS and VOULA D. WATERS, Plaintiffs, -vs- UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant.	THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d). NO. CV-91-3615-WFN ORDER (Filed Nov. 21, 1991)

Before the Court is defendant's Motion to Dismiss and plaintiffs' Cross-Motion for Sanctions, heard on November 8, 1991 before the Honorable Wm. Fremming Nielsen, sitting by designation. Appearing for defendant was Paul Fine, and appearing for plaintiffs were William Shernoff and Frank Darras. As the Court requires further briefing on the issue of the nature of a reciprocal insurance exchange. Availability of class action and the inherent power of the Court to impose sanctions for conduct not directly involved by related to this action, the Court **RESERVES** ruling on the Motions.

Plaintiffs initiated this action to recover amounts allegedly due in excess of that offered by defendant under a home insurance policy. Defendant asserts summary judgment is merited in the absence of subject matter jurisdiction, because of lack of diversity. Defendant claims that it is an unincorporated association and therefore its citizenship is that of all members, including the over 180,000 California members. Plaintiffs counter that defendant as a statutorily created reciprocal insurance

exchange is subject to jurisdiction similar to that exercised over corporations. Plaintiffs in the alternative seek permission to amend their complaint to allow them to proceed as a class action. Plaintiffs finally assert that defendant's past conduct, asserting status as a corporate entity in some actions and as a non-corporate entity in others, merits sanctions being imposed.

The Court has read *Cardon v. Arkoma Assocs.*, 494 U.S. 185 (1990) and believes that the subject matter jurisdiction based on diversity would be absent if defendant is found to be an unincorporated association. Defendant cites *Baer v. U.S.A.A.*, 503 F.2d 393 (2nd Cir. 1974) and *Tuck v. U.S.A.A.*, 859 F.2d 842 (10th Cir. 1988), *cert. den.*, 489 U.S. 1080 (1989) for the proposition that it is an unincorporated association. However, plaintiffs assert that defendant as a reciprocal insurance exchange is not subject to the same rules to which an unincorporated association is subject. If plaintiffs are correct, *Cardon* would not be controlling. The Court requires further briefing on this issue.

If *Cardon* does control, there is authority that suggests that plaintiffs could still amend the complaint to bring this suite under Federal Rules of Civil Procedure 23.2, Class Actions. Further briefing is also required on this issue.

The Court is finally concerned with defendant's varying posture on whether it is an unincorporated association. Clearly, in this case, defendant only assumes that posture of an unincorporated association, but the varying stances can only be seen by comparing cases not before this Court. Does the inherent power of the court permit

this Court to impose sanctions upon defendant recognizing a flagrant pattern of abuse of the federal court system when this case is only one facet of the overall picture? Further briefing is required. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that the parties submit briefing on issues of the nature of the reciprocal insurance exchange as an entity, ability to proceed under Federal Rules of Civil Procedure 23.2 and the inherent power of the court to sanction for activities outside the bounds of the case at bar. Plaintiffs shall **file their brief no later than December 9, 1981**; defendant shall **respond no later than December 30, 1991**; and plaintiffs shall **reply no later than January 8, 1992**. The Court further **ORDERS** that no further hearing will be necessary unless so ordered by this Court.

The Clerk is hereby **DIRECTED** to enter this Order and forward copies to counsel.

DATED this 19 day of November, 1991.

/s/ Wm. F. Nielsen
Wm. Fremming Nielsen
United States District Judge
Presiding by Designation